Allahabad Law Journal

1986

[Vol LXXXII]

(A fortnightly Legal Publication Published on 15th and 30th of every month)

CONTAINING

Articles and Reviews of Books

AND

(Full Reports of all Reportable Judgments of Allahabad High Court and Supreme Court on Appeal from Allahabad H C)

Annual Index containing consolidated Nominal Table as well as Subject Index

CITATION 1986 ALL L J

EDITOR

Shri A D Prabhakar M A LL B Advocate Allahabad High Court

Printed by J W CHITALEY at the A I R Rotary Printing Press and Published by J W CHITALEY on behalf of and in the name of the All India Reporter Ltd at Congress Nagar Nagpur

INDEX TO JOURNAL SECTION 1986

ARTICLES

—Conflicting Decision of the Supreme Court in State Government Pensioners Association and others v State of Andhra Pradesh By Shri M P Tandon Advocate (30th Dec) 13

— A Conflict in the Recent Decisions of the Allahabad High Court By Atha Keshwar Dayal Advocate (15th Aug) 1

— Demand for High Court Bench in Western U P By Krishna Chandra Advocate (15th Aug) 6

— The Dynamic Concept of Mahr in Relation to Muslim Women (Protection of Rights on Divorce) Act 1986 By Anwar Ali Advocate (15th Aug) 9

— A Tribute to N C Upadhyay Ex Advocate General U P By K M Sinha Advocate (30th Jan)

BOOKS REVIEWED

Hindu Law

हिन्दू विधि का स्रोत

A Critical Study of Hindu Law and its Sources) (First Edition 1986) By Dr Ved Prakash Upadhyaya (15th Aug) 11

The Supreme Court on the Hindu Marriage Act 1955 First Edition 1986 By Shri P C Banerjee and Amitava Banerjee Advocates (30th Dec) 16

Houses and Rents

Uttar Pradesh (Regulation of Building Operations) Act 1958 and Uttar Pradesh Urban Planning and Development Act 1973 (Together with Rules Regulations Orders and Notifications Etc 4th Edition 1986) By Uma Shankar (30th Dec) 1

Law General

Law as Instrument of Change First Edition December 1985 By Honourable Chief Justice P N Bhagwati (15th Aug) 11

Books Reviewed (contd)

Motor Vehicles

Cupta Compensation Claims 4th Edition 1986 Revised by A K K Murthy Advocate (30th Dec) 15

Negotiable Instruments

Cupta's Promissory Notes (Law Practice and Procedure) 4th Edition (1985 86) Revised Enlarged and Updated by A R K Murthy Advocate (30th Aug) 15

Sales Tax

S D Singh's The Law of Sales Tax in Uttar Pradesh In Two Volumes Fifth Edition 1986 Vol I Revised by C C Mathur Senior Advocate (15 Nov) 15

Transfer of Property

The Law of Immovable Property First Edition 1986 By Shri P C Banerjee and Amitava Banerjee Advocates (30th Dec) 15

Wages

The Minimum Wages Act 1948 Together with Rules and Minimum Wages Rules in Different Industries and Establishments in Uttar Pradesh and U P Industrial Peace (Timely Payment of Wages) Act 1948 and Rules Fifth Edition 1985 By P L Malik (30th Aug) 10

LIST OF HOLIDAYS

List of Allahabad High Court Holidays including Lucknow Bench for the Year 1986 (30th January) 1

List of Holidays for Subordinate Courts of Judicature at Allahabad for the Year 1986 (30th Jan) 2

Proposed List of Days to be observed as Closed Holidays in the High Court of Judicature at Allahabad including Lucknow Bench during the Year 1987 (30th Dec) 14

NOMINAL TABLE

Abdul Razzaq v Deputy Director of Consolidation 680
Adalti Singh v Board of Revenue 1102
Adal Singh v Board of Revenue 817
Adarsh Travels Bus Service v State of U P 215 (SC)
Agarwal Brothers v State Transport Appellate Tribunal 196
Agarwal Kirana Corporation v Krishi Utpadan Mandi Samiti Sadabad (Mathura) 193
Agha Sajad Ali Shah v Rent Control and Eviction Officer 763
Ahmad Nabi v State 550
Ajoy Kumar Basu v Chandi Das Basu 1124
Ajug Narain v Deputy Director of Consolidation 830
Ali Hasan v Smt Zamina 1199
Alka Juswal Dr v Fr I Fernandes 133
Allahabad Galla Tilhan Vyapari Sangh v Krishi Utpadan Mandi Samiti 816
Amarendra Kumar Dubey Dr v Principal S N Medical College 386
Amarez Yadav v Union of India 1196
Amar Mani Tripathi v State 498
Amar Nath v IV Additional District and Sessions Judge 547
Amar Singh v Assistant Director of Consolidation 647
Amar Singh v State 821
Amarendra Pratap Saksena v Sukhnandan Gupta 1281
Amrit Chand Tripathi v University of Allahabad 1485
Anamika Misra v University of Allahabad 184
Anand Singh Waldia v Collector 71
Anil Kumar Shukla v Vice Chancellor Gorakhpur University 958
Anurag Kumar Barnwal v State 470
Anwarul Haq Fazli v State Transport Appellate Tribunal 324
Arun Kumar Rastogi v Chandra Kumari 1422
Arun Kumar Singh v Gorakhpur University 286
Ashfaq Ali Khan v VIII Additional District Judge 432
Ashok Kumar Verma v Umesh Kumar Mittal 1484
Aslam v State 737
Ata Mahommed v Tulli 157
Ateeq Mohammad v Amanullah 306
Atwahoo v Ram Lagan 1433
Azhar Hussain v Rajiv Gandhi 625 (SC)
Baboo Lal v State 1235
Babu Singh v The Sub Divisional Magistrate 1142
Babu v State 1241
Babu Lal Sahu v Smt Tulsa Bai 946
Babu Ram v State 127
Badri Prasad v Prescribed Authority (Ceiling)/Sub Divisional Officer 599
Bahori Singh v 5th Additional Dist Judge 813
Bajnath Ram v Director of Consolidation 1274
Baipai P C v Rahmanulhaq 81
Baldeo Raj v Smt Deowati 1108
Balluma Commercial College v The IVth Addl Dist Judge 616
Balwant Singh v State Bank of India Jansath 938
Banaras Hindu University v Gokul Das Nagar 31
Bangali v District Judge 249
Bani Bose v District Magistrate 1236
Baoshoo v District Panchayat Raj Officer 1143
Basanti Devi v Bal Kishan Pandey 109
Bashir Ahmad v Deputy Director of Consolidation 1083
Battu Lal Nikhara v Bhartiya Khadye Nigam 799
Beedha Singh v District Registrar Co operative Societies 616
Beni Prasad v Deputy Director of Consolidation 999
Bhagwant v Sub-Divisional Magistrate 1388
Bhagwati Prasad v Deputy Director of Consolidation 990
Bhangi Singh v State 1516
Bharat Lal Singh v District Magistrate 1441
Bharatraj Singh v R T A Varanasi See 597 (SC)
Bharat Singh v Smt Bhudevi 1264
Bharsa v State of U P 1163
Bheem Singh v State 722
Bhim Singh MLA v State of J and K 653 (SC)
Bidha v Board of Revenue 1073
Bina Rani v Fakir Chand 86
Bismillah Begum v IV Addl Dist and Sessions Judge 444

Basram v State 1003
Brahma Deo v Board of Revenue 1293
Brahmadeo v Dy Director of Consolidation at Deoria 1270
Brijbasi Pathak v State 94
Brij Behari Sahai v State of Uttar Pradesh 1067 (SC)
Brijendra Singh v State 300
Brij Kishore v Aunkt Zila Adhikari 1243
Brij Raj v District Judge Kanpur 910
Chandi Dutta Goswami v Panchayati Dara Bara Minan Kankhal 1346
Chandra v Budha 381
Chandrapal v Basdeo Prasad 1013
Chandrapati v Gunnu 839
Chandra Shekhar Shashi Shekhar v State 335
Chandrawati v U P State Electricity Board 1451
Chandrawati Devi Smt v State 1203
Chandrekesh Rai v Deputy Director of Education V Region 107
Chhanga Prasad Sahu v State 328 (FB)
Chhungur v Deputy Director of Consolidation 1085
Chheda v State 679
Chhedi Lal v The Vth Additional District Judge 125
Chhotey Lal v State Electricity Board 404
Christopher Madhai v State 1040
Collector Varanasi v Baba Niranjan Das 1155
Commr of Sales Tax U P v Macneill and Barry Ltd Kanpur 252 (SC)
Committee of Management of Kishan Uchchatar Madhyamik Vidyalaya v Deputy Director of Education Meerut 88
Committee of Management of Sri Bala Prasad Kuswaha Inter College Balrampur v Deputy Director of Education IV Region 236
Dakhilal Kushwaha v 5th Additional District Judge 582
Darul Ulum Islamia v Civil Judge Basti 1130
Dayaram v State 1220
Deepak Kumar Dr v The District Judge 978
Deepak Sachdeva v State 3
Devendra Bahadur Singh v Jauhari Lal Trivedi 1470
Dharampal Tyagi v Anil Kumar 1047
Dhirendra Nath Mukerjee v Amar Nath Mukerjee 211
Dina Nath v Deo Narain 340
Dinesh Kumar v Principal Motilal Nehru Medical College 428
Dudh Nath Dubey v District Judge 1257
Durga Devi v First Additional District and Sessions Judge 942
Ethel Walters v Ajit Dutt 9
Fateh Mohammed v State 1519
Food Corporation of India v Dr K C Sharma 1261
Food Corporation of India v Karnail Singh 1410
Gajendra Pal Gupta v State of U P See 597 (SC)
Ganesh Misra v VIth Addl District Judge 891
Ganga Din v State 336
Ganga Saran v Nagar Palika Muzaffarnagar 879
Ganpat Giri v IInd Additional District Judge Balia 271 (SC)
Gaon Sabha v Deputy Director of Consolidation Allahabad 293
Ghanshyam Bhagat v State of Uttar Pradesh 312
Girish Chandra v The Third Additional District Judge Pilibhit 318
Godavari Sugar Mills Ltd v Board of Revenue See 257 (SC)
Gopal Krishna Awasthi v The District Judge 535
Gorakh Nath Upadhya v State 717
Gulam Abbas v State of U P 1368 (SC)
Gupta G B v State 1535
Gur Bux Singh Bakshi v State 543
Guru Charan Singh v Superintendent, Central Jail Bareilly 1172
Gyanendra Lal v Bishun Narain Misra 306
Gyanendra Prakash Sangal v 1st Additional District Judge 1438
Gyanwati Smt v 4th Additional District Judge Allahabad — 1182
Habib Ahmad Khan Dr v U P Sunni Central Board of Waqfs 1157
Habib Ullah v State 287
Habib ul Rahman v 1st Addl District Judge 1415
Hafiza Smt v Deputy Director of Consolidation 988
Haji Abdul Shakoor v U P Sunni Central Board of Waqfs 1358
Hans Raj Sharma v First Additional District Judge 1135
Harbans Lal v Jagmohan Saran 84 (SC)
Hargurdas Rao Chaube v The State Transport Appellate Tribunal 895
Harihar Sharma v State 683
Hari Shankar v Vijay Kumar Rastogi 297

Harish Chandra Jindal v Nagar Palika 877
Harnam Kaur Smt v Prescribed Authority (Civil Judge Mohanlalganj) Lucknow 973
Har Prasad v 4th Additional District and Sessions Judge 1043
Har Pratap Singh v Shyam Surat Upadhyaya 1491
Harswarup v State 735
Hashmuddin v Kishan Lal Narang 693
Hem Lata Smt v Sh Dharam Veer Singh 828
Hindustan Aeronautics Ltd v Karmachari Sangh 460
Hira Lal Swami v 3rd Addl District Judge 755
Hirday Narain Singh v Moloo Lal Srivastava 689
Hussain v The Hon The Chief Justice of High Court of Judicature at Allahabad 285 (SC)
Ikrar Ahmad alias Akhlaq Ahmad v Superintendent of Central Jail 1527
Indrapal Singh v State 1258
Irfan v State 391
Islam v State 46
Islamuddin v Judge Small Causes Court Bulandshahr 495
Jadu Das Mukerji v IVth Additional District Judge 62
Jafar Ali v Smt Raj Rani 981
Jagannath Prasad v IV Addl District Judge Mathura 778
Jagardeo v Board of Revenue 1243
Jagat Narain Singh v U P S R T C 613
Jagdish Prasad v 1st Additional District Judge 708
Jagdish Prasad v State 1
Jain Shudh Vanaspati Ltd v State 595
Jaiswal-P D v State of U P See 597 (SC)
Jalkishan Mallah Matseyajeevi Sahakari Samiti Ltd v State of Uttar Pradesh 392 (SC)
Jamni Devi v Union of India 783
Jamuna Ahir v Ram Bali Singh 179
Jamuna Singh v Deputy Director of Consolidation 1276
Jang Bahadur Saxena v VIII Addl Dist Judge 347
Janki Prasad and Sons v Nagar Mahapalika 475
Jayanti Devi v District Judge 204
Jhinguri Singh v Deputy Director of Consolidation 769
Jiwan Das v Fertilizer Corporation of India Ltd 1104
Jupiter Chit Fund Pvt Ltd v State 710
Kailash Chandra v Lalta Prasad 1392
Kaka Singh v Additional Collector and District Magistrate (Finance and Revenue) Bulandshahar 49
Kakubhai and Co v Nathmal See 1027 (SC)
Kali Das Wadhwani v Jagjiwan Das 554
Kali Prasad v Deputy Director of Consolidation 949
Kamal Singh Yadav v Vice Chancellor 135
Kamla Devi v Collector 1103
Kamla Devi v Sushila Devi 856
Kamta Prasad v Board of Revenue U P 860
Keshav Devi v Girdhari Lal Pahwa 1509 (SC)
Kesho Prasad Singh v State of U P 1175
Khalid Ansar Haque v Aligarh Muslim University 1313
Khalil Ahmad v State 1433
Khanna Brothers Kanpur v Smt Sita Devi 233
Khursheed Khatoon Smt v 3rd Additional District Judge 994
Kiran Devi v Fourth Additional District Judge 438
Kishan Lal v Chhotey Lal 1517
Kitab Singh v Het Singh 58
Konkan Trading Company v Suresh Govind Kamat Tarkar 867 (SC)
Krishna Devi v VI Additional District and Sessions Judge 436
Krishna Devi v Smt Krishna Devi 76
Krishna Deo Misra v The District Magistrate 1445
Krishna Devi Smt v Sarju Prasad 363
Krishna Dutt Bajpai v Distt Inspector of Schools Rai Bareli 270
Krishna Kumar Bhargava v Metropolitan Magistrate 1093
Krishna Kumar Pandey v Superintendent of District Jail 1227
Krishna Pratap Singh v Narain Hari Sharma 1329
Kunwarpal v Deputy Director of Consolidation Mathura 576
Lakshmi Narain v Deputy Director of Consolidation 465
Lala Ram v Arjun Das 342
Lal Devendra Bahadur Pal v Lal Rudra Narain Pal 1088
Lalli alias Chiranjib Bhowmick v State of West Bengal 768 (SC)
Lucknow Decean Trust Association v Ramesh Chand Jain 1365
Lukman v State of U P 1186

M S Bansal Pvt Ltd v District Judge 144
Madan Gopal Agrawal v The District Magistrate Etah 568
Madan Industries Ltd v Notified Area Committee 1406
Mahabir v Deputy Director of Consolidation 965
Mahabir Prasad v Munsif Havali 1161
Mahavir Singh v Shri Pal 947
Mahendra v State 1453
Mahendra Kumar Jain v State 719
Mahendra Kumar Khanna v M/s Delhi Trading Company 116
Mahesh Chandra Palawal v Collector and District Magistrate 1457
Mahinder Kumar Jain v State of U P See 597 (SC)
Mahommed Amin v U P Sanchalak Chakbandi (Dy Director Consolidation) Pratapgarh 351
Mahommed Hanif v Ram Datta Mal 791
Mahommed Islam v State 724
Mahommed Idris v The III Additional District and Sessions Judge 884
Mahommed Mahir v State 346
Mahommed Naseem v State 78
Mahommed Saleem v The Regional Transport Authority 1316
Mahommed Shafiq v Taxation Officer of Motor Vehicle Department 834
Mahommed Shafi Ullah Ansari v State 996
Mahtab Begum Smt v Ansar Ahmad 1096
Maiku v Vilayat Hussain through L Rs 764 (SC)
Mamola Smt (deceased by LRs) v Deputy Director of Consolidation 1336
Managing Committee of Adarsh Intermediate College v Deputy Director of Education 1294
Managing Committee Ram Prasad Bismil Higher Secondary School v Deputy Director of Education 323
Manik Chand v Murari Kishan Tayal 836
Mani Ram Lohia v Ghanshyam Dass Richariya 823
Manna Singh v Durga Singh 83
Mansoor Khan v Sri Krishna 969
Maqbool Ahmad v Bhura Lal 5
Master Mantoo v Ajeet Kumar Sinha 742
Mathura Dutt Bist v State Transport Appellate Tribunal Lucknow 314
Matoley v State 645
Matru Singh v State 1504
Matsya Jivi Sahkari Samiti Semari v Addl Commissioner (Admns) Gorakhpur Division 188
Mazahar Abbas v Smt Sakeena 675
Misra S K v State 1376 (FB)
Mohanlal Hargovind Dass v State 585
Mohinder v State 931
Mool Chand v IV Additional District Judge 1070
Moradabad Gujrati Sugar Works v State 69
Moti Lal (deceased by L R s) v Deputy Director of Consolidation Azamgarh 1197
Mridula Dayal Smt v VI Additional District Judge 1051
Mulal Rai Madan v III Additional District and Sessions Judge Moradabad 790
Munesh Kumar Agnihotri v Lalli Prasad Gupta 532
Munni v Deputy Director of Consolidation 1499
Munna Jaiswal v District Magistrate Varanasi 266
Munney Khan v Kalloo Singh 1095
Nagar Swasthya Adhikari Nagar Mahapalika v Om Prakash 1319
Nanakram v Kundalrai 1027 (SC)
Nanhey Lal v State 882
Narayan Devi v Harish Chandra 369
Narayani Devi Smt v Sonpal 146
Narendra Bahadur Singh v District Inspector of Schools 1025
Narendra Singh v Superintendent Central Jail 899
Natha Ram v Hukam Chand 354
Nathu Prasad v Deputy Director of Consolidation 458
Naulakh v State 1256
Nawal Kishore Lal v Deputy Director of Consolidation 117
Nirmal Kumar Upadhyay v Manager Singh 1460
Niyaz Ahmad v D D C 759
Om Prakash v Bhagwan Das 740 (SC)
Om Prakash v Deputy Director of Consolidation Meerut 399
Om Prakash Sharma v IXth Additional District Judge 943
Om Prakash Shukla v Akhilesh Kumar Shukla 662 (SC)
Om Prakash v State 863
Onkar Singh v Regional Transport Authority Agra 673 (SC)
P V K Distillery Ltd v State of Uttar Pradesh 1205
Pandit Devi Prasad Misra v Second Additional District Judge 796
Pan Singh v State 1401
Param Sukh v 3rd Additional Dist Judge 1305
Paras Nath v Board of Revenue 21 (FB)

Parbati Devi v Smt Lalloo Devi 467
Parsu Ram Das Agarwal v Jagdish Pd Sahu 527
Phundan Lal v Jhammao Lal 1342
Prabhakar Pandey v Collector/District Magistrate 873
Prabhawati Devi v Smt Kamla Devi 1146
Pradeep Chand Jain v District Magistrate 815
Prem Chandra v District Magistrate 820
Prem Shanker Tripathi v 1st Additional District Judge Allahabad 1200
Prem Singh v State 29
Radha Kishan v Smt Premwati Devi 428
Radha Ram Bhargava Smt v 3rd Addl District Judge Lucknow 972
Radhey Shyam Mishra v State 1341
Raghavendra Singh v Superintendent District Jail Kanpur 397 (SC)
Raghubir Narain v State 1022
Raghunath v District Judge 29
Raghuvir Sahai v District Magistrate 1442
Raifaqat Husain v Rama Shanker Kaushik 1446
Raj Bahadur Singh v Collector Etawah Cum District Magistrate 357
Rajendra v State 1253
Rajiv Sharma v State 415
Raj Kumar v Assistant Sugar Commr and Appellate Authority under U P Sugarcane (Purchase Tax) Act 1961 Moradabad 291
Raj Kumar v State 282
Raj Kumari v Addl District Judge 609
Rajmata Vijai Raje Sindia v State of Uttar Pradesh 326 (SC)
Rajwa v State 1505
Ram Anugrah Shukla v Director of Education (Higher) U P 1133
Ram Autar v Chancellor Meerut University 205
Ram Bharose Lal v State 1425
Ram Brick Field v State 728
Ram Dehal v Ram Kishore 186
Ram Dhani Singh v State 1399
Ram Dular v State 1427
Ramesh Chand v State 245
Ramesh Chandra Agarwal v 2nd Additional District Judge Ghazipur 650
Rameshwar Dayal v Custodian of Enemy Property for India 1251
Ramgarh Farm and Industries Ltd v State 172
Ram Kali v IV Additional District and Sessions Judge 451
Ram Kishan Misra v State 607
Ram Kishore v Deputy Director Consolidation 780
Ramkishore v State 757
Ram Kumar v 2nd Additional District and Sessions Judge 462
Ram Lal v Sheo Bilak 733
Ram Narain Himmat Ram v Jalaun Kraya Vikraya Sahkari Samiti Ltd 570
Ram Naresh v Board of Revenue 157
Ram Naresh v Deputy Director of Consolidation 841
Ram Pal Tewari v State of U P 1211
Ram Pati v District Judge 196
Ram Prasad Chaudhary v State 919 (FB)
Ram Pyare Bajpai v Mukandi Lal Garg 449
Ram Samujh Singh v The Registrar Co operative Societies U P 802
Ram Sanehi Lal v State Transport Appellate Tribunal 201
Ram Sewak v Dy Director of Consolidation 182
Ram Sumiran v D D C 178 (SC)
Ram Swaroop v District Judge Banda 169
Rasheed Ahmad v Board of Revenue 463
Ratan Singh v Pheree 1239
Rattan Arya etc etc v State of Tamil Nadu 1168 (SC)
Rattan Lal Tiwari v State of U P See 597 (SC)
Rewa Chand Khattar v State 1028
Riazuddin v Dy Director (Consolidation) 685
Riazuddin v 12th Additional District Judge 788
Rubi v Hayat Mohammad 1353
Sadhu Ram Agarwal v Smt Shanti Sharma 705
Sahab Singh v Kashi Nath Mishra 477
Salil Kumar Roy Dr v Vice Chancellor Banaras Hindu University 1111
Sahmkhan Sardarkhan v State of Gujarat 651 (SC)
Samar Singh v Kedar Nath 1321
Samiullah v Saleem Mohammad 1117
Sanjiv Yadava v Union of India 1332
Santosh Sharma v General Manager Haryana Raj Parivahan 1339
Sardar Hussain v VIII Addl District Judge 1078
Sardar Surendra Mohan Puri v Sardar Surendra Singh 166
Sarnam Singh v Smt Pushpa Devi 507
Sarv Daman Singh v D D C 1302
Satya Narain and Co v State 485
Satyapal v State 1232
Shakuntala Devi v Lady Mohan Mathur 488

Shams Iqbal v State 120
Shanti Ojha v Smt Sachi Kumari Mishra 745
Sharda Devi Smt v 1st Addl District and Sessions Judge 310
Shashi Prakash v Agra University 869
Shasi Nath Pathak v Smt Phool Mani Devi 160
Sheela Barse v Union of India **1369 (SC)**
Sheo Bahal Singh v Dr Madan Mohan 1413
Sheo Dutt v Board of Revenue 908
Sheo Murti Gupta v Shri Ghoorey Lal 572
Shia Central Board of Waqfs v District Judge 425
Shish Ram v Assistant Registrar of Co operative Societies 747
Shish Ram v Board of Revenue 1430
Shitala Prasad Shukla v State of U P **793 (SC)**
Shivam Talkies v State 96
Shri Nath v Deputy Director of Consolidation Sultanpur 940
Shri Vidur Seva Ashram v State 1091
Singh B P v District Magistrate 752
Sirtam Smt v 7th Additional District Judge 1152
Sita Ram v Board of Revenue 1444
Sobran Singh v Sadhan Sahkari Samiti 894
Somaiya Organics (India) Ltd v Board of Revenue U P **257 (SC)**
Sri Ram Tewari v Passenger Tax Officer Gorakhpur 310
State v Begum Saleha Hadi Hasan 1244
State v Dropdi Singh Smt 1122
State v Gaya Prasad 1035
State v Gurmeet Singh 1420
State v Lalta Prasad 913
State v Latif 41
State v Latooni Singh 427
State v Mrs Prakash Murthy 112
State Bank of India v M/s Saksaria Sugar Mills Ltd **621 (SC)**
State of Gujarat v Panch of Nani Hamam s Pole **659 (SC)**
State of U P v Allahabad Balu Udyog **See 392 (SC)**
State of U P v Ballabha Das **175 (SC)**
State of U P v Brij Behari Sahai **See 1067 (SC)**
State of U P v Duli Chand 887
State of U P v Lalloo **275 (SC)**
State of U P v Prakash Chandra 1192
State of U P v Satish Chandra **162 (SC)**
Sudhir Trading Co v State of U P 871
Suhail Ahmed v 3rd Addl District Judge Aligarh 970
Sukali v Deputy Director of Consolidation Varanasi 963
Suk Das v Union Territory of Arunachal Pradesh **774 (SC)**
Sukhan (deceased by LRs) v Deputy Director of Consolidation Azamgarh 1194
Sukh Lal v Deputy Director of Consolidation 418
Sukhmal Chand Jain v Suraj Bhan 208
Sukh Ram Singh v Baij Nath Singh 163
Sumer Chand Sharma v State of U P **597 (SC)**
Sunil Vyas v Vice Chancellor 1383
Sunu v Deputy Director of Consolidation 457
Suraj Mal v Ram Singh **1061 (SC)**
Surendra Pal v Admission Committee 749
Surendra Pratap Singh v Registrar Co operative Societies 70
Suresh Chandra Sharma v State 1284
Surinder Singh Ahluwalia v Smt Pushpa Rani 1056
Swami Nagar Nagrik Parishad v State 558
Synthetics and Chemicals Ltd v Controller Weights and Measures 408
Talib Husain v 1st Additional District Judge Nainital **845 (FB)**
Tej v Deputy Director of Consolidation 578
Thakur Dass v Deputy Director of Consolidation Jhansi 388
Tripathi Narain Tewari v Gorakhpur Kshetriya Gramin Bank 224
Ubaidur Rehman v District Judge Saharanpur 1089
Udai Shanker v Additional Commissioner 955
Union of India v M/s Lakshmi Sugar and Oil Mills Ltd Hardoi **254 (SC)**
Urmila Tuli v Prakash Bhalotia 732
U P Atta Chakki Vyawsai Sangh v The Zila Parishad 1033
U P State Electricity Board v Municipal Board 1288
U P State Warehouse Corporation v Jalaun District Co operative Bank Ltd 1068
Vasdeo Saran Agarwal (Jindal) v VIth Additional District Judge 74

Vijai Kumar v Zila Parishad District Deoria 1213
Vijai Pratap Singh v State 904
Vijai Sharma Mishra v State 574
Vijay Laxmi Gangal v Mahendra Pratap Gang 393 (SC)
Vijay Narain v State 643
Vijay Tyagi Dr v Principal L L R M Medical College 1414
Vinod Kumar v State 1438
Vinod Kumar Srivastava v Sri Rama Shanker Nigam 1459
Virendra Kumar Seth v Smt Roopa Seth 1366
Virendra Pratap Shahi v State 53
Vyapar Mandal Society Nehtaur v Nagar Palika Nehtaur 373
Yadu Nath Pandey v District Panchayat Raj Officer 1456
Zafarullah Khan v IVth Additional District Judge 358
Zahir Ahmad v 3rd Additional District Judge Meerut 1187
Zilla Parishad v Ghooran Singh 1154
Zohara Khatoon Mst v Mohd Ibrahim 281 (SC)
Zohra Fatma v Deputy Director of Consolidation 1514
Zulfiwar Ali v State of U P 1177

SUBJECT INDEX

Abatement
——Setting aside of — Sufficient cause — See Limitation Act (1963) S 5 354

Accommodation
——Allotment — Form of application — See 763

Administration of Evacuee Property Act (31 of 1950)
——Ss 7 (1) 46 — Bar of suit under S 46 — Suit for injunction restraining A from interfering with possession — A cannot invoke bar of suit on ground of sale of property by authority under the Act when it is not declared evacuee property by following procedure under S 7(1) 381 A
——S 46 — See 381 A

Administrative Law
——Opportunity of hearing — Order affecting salary — See 1136 B

Adverse possession
——Co tenancy — Case taker s right — See 839
——Must be adverse to knowledge of real owner — See 369 A

Agra University Act (8 of 1926)
See under Education

Agra University Ordinances
See under Education

Agriculturists
——Loan to — Recovery by Bank — See 224

Aligarh Muslim University Act (40 of 1920)
See under Education

Allahabad High Court Rules (1952)
See under High Court Rules and Orders

Allahabad University Act (3 of 1921)
See under Education

Allahabad University Admission Rules (1984)
See under Education

Allahabad University Rules for Admission to L L B Course
See under Education

Appeal against acquittal
——Hearing — Procedure — See 41

Appellate Court
——Powers of — Appeal against acquittal — See 1035

Arbitration Act (10 of 1940)
——S 2 (b) — Award — Award acted upon by parties — Not made rule of Court — It can be still relied upon by parties thereof 999 B
——Ss 9 (b) — See 1288 C
——Ss 14 (2) and 17 — Limitation Act (36 of 1963) Art 119 — Arbitrator making award and giving copies to parties — On basis of copy party making application under S 17 for passing decree in terms of award — Decree in terms of award passed under S 17 is valid — Art 119 has no application 799
——S 17 — See 799

Arbitration Act (contd)
——Ss 20 39 (as amended by U P Civil Laws Reforms and Amendment Act 1976) — Order under S 20 — When appealable — Order that dispute is to be referred to arbitrator to be appointed by party or the Court — Arbitrator not determined — Order does not amount to an order making a reference under S 20 (4) — No appeal under Sec 39 lies against it 1410
——S 20 — See also 1237 A 1237 B
——S 30 — Setting aside of Award — Error on the face of the record — When can award be set aside 1104 A
——S 30 — Arbitration assuming rise in coal price without any evidence — Arbitrator determining damages payable on his ipse dixit — Quantum of damages determined not justified 1104 L
——Ss 30 and 33 — Arbitration — Reasons not given by umpire — Award cannot be set aside 1288 D
——Ss 30 and 33 — Proceedings for setting aside award — Validity of arbitration agreement cannot be challenged 1288 F
——S 30 — Limitation Act (36 of 1963) Art 119 — Rule made award before expiry of 30 days from date of service of notice on opposite party — Order is illegal 1365
——S 30 — See also **1061 (SC)**
——Ss 33 and 76 — Electricity (Supply) Act (54 of 1948) S 76 — Supply of electric energy by Board — Arbitration clause in agreement that dispute to be decided as enjoined by S 76 — Section 76 deleted from statute — Dispute decided by umpire in terms of agreement — Board participating in proceeding before arbitrator and then before umpire — Competency of umpire to decide dispute cannot be challenged 1288 A
——S 33 — See also 1288 D F
——Ss 37 (3) and 9 (b) — Section 37 (3) has to be read along with S 9 (b) — Parties appointing their arbitrators — Section 9 (b) which provides for setting aside appointment of sole arbitrator on sufficient cause being shown does not apply 1288 C
——S 39 — See **1061 (SC)** 1410
——S 46 — See 1257
——S 76 — See 1288 A

Arms Act (54 of 1958)
——S 2 (c) and 2 (e) — See 336 A
——Ss 5 2 (c) 2 (e) — Licence for manufacture of fire arms etc — Obligation of obtaining licence applies not only to a complete arm but even to an arm which is in the process of manufacture 336 A
——Ss 17 18 — Arms Licence — Revocation or suspension — Opportunity of hearing

Arms Act (contd)
to licensee — Act excludes hearing to licensee prior to revocation/suspension of licence AIR 1966 All 265 AIR 1969 Cal 349 AIR 1970 Orissa 110 AIR 1971 Ker 162 AIR 1972 Punj & Har 122 **Held per incuriam** 326 A (FB)
——S 18 — Arms Licence — Powers of licensing authority to revoke/suspend — Scope — Licensing authority cannot pending enquiry into revocation or suspension of licence order its suspension 326 B (FB)
——S 17 — Cancellation or suspension of licence — Licensing authority who granted licence not alone competent to cancel suspend licence — Any Licensing Authority is competent to do so 1444
——S 17 (3) — License — Suspension pending enquiry whether suspension is necessary — Not permissible — Satisfaction of District Magistrate must be final and not tentative 1442
——S 18 — See 326 A (FB)
——S 25 — See 336 B

Arrest
——Malicious intent — Compensation — See **633 B (SC)**

Bail
——Applicant not surrendering before Magistrate or Sessions Court — Effect — See 607
——Grant of — Applicability of principles in English law — See 563 B
——Grant of — Plea of right of private defence — See 363 A
——Second application for — See 550

Banaras Hindu University Merit Promotion Scheme
See under Education

Bank
——Loan to Agriculturists — Recovery of — See 224

Bona fide need
——Accommodation for daughter and son in law of landlord — See 117

Bride Burning
——Punishment — See 1400 B

Building
——Deemed vacancy — Declaration — Notice to person affected — See 535 A
——Portion of large roofed structure is building — See 554 A

Capital Punishment
——Award of — Bride burning — See 1438 B

Central Provinces and Berar Letting of Houses and Rents Control Order (1949)
See under Houses and Rents

Children

——Detention in jail — See 1369 D (SC)
——Speedy trial — See 1369 E (SC)

Children Act (60 of 1960)

——S 1 — See 1369 A B G (SC)
——S 3 — See 1369 A D E F (SC)

Civil Funds Act (40 of 1982)

——Ss 1 (3) and 90 (1) — U P Civil Funds Act (U P Act No 33 of 1975) S 1 — Notification bringing Central Act into force not issued — U P Act would not cease to be operative in State consequent upon enactment of Central Act 710 A
——S 90 (1) — See 710 A

Christian Law

——Custom — Adoption — No custom to claim being heir of deceased through adoption 3 B

Cinema

——Licence — Refusal — Aggrieved person — See 752 A

Cinematograph

See 96

Cinematograph Act (2 of 1918)

——S 9 — See 96 B

Civil Procedure Code (5 of 1908)

——S 2 (11) — See 26 B
——S 9 — U P Consolidation of Holdings Act (5 of 1964) S 9 A (2) — Evidence Act (1 of 1872) Ss 115 3 — Plea of jurisdiction of Civil Court — Suit for declaration in respect of sirdari and bhumidari land filed in Civil Court — Plea of jurisdiction of Civil Court raised and it became final — No second appeal preferred — Judgment of Civil Court would operate as res judicata in subsequent consolidation 1302
——S 9 — See also 25A 58 381A 399 C 554B 856 B 1161 1200
——S 11 O I R 8 — Res judicata — Earlier suit by residents in representative capacity for restraining parties in possession of pasture land from interfering with their right to use land as pasture — Issues as to jurisdiction of Court and non-joinder of parties — Gaon Sabha and State decided in favour of plaintiffs — Suit and appeal thereafter dismissed — Defendants held Sirdars of land — Decision is binding on Gaon Sabha 399 A
——S 11 — Evidence Act (1 of 1872) S 114 — Compromise decree operates as estoppel by conduct and not as res judicata 965 B
——S 11 — Res judicata — Controversy as to presumption of civil death of petitioner raised in earlier case decided and negatived by High Court — Similar controversy raised in subsequent case — Earlier decision of High Court will operate as res judicata 1276 A
——S 11 — See 240 769A 360A 1345 B
——S 20 (c) — Suit for recovery of money — Quorum 1466
——S 33 — See 5
——S 35 A — See 5 1175 B
——S 47 — See 600
——Ss 96 115 2 (2) O 7 R 11 — Word Decree includes rejection of plaint — Order rejecting plaint is appealable — Revision to High Court is not maintainable 717
——S 96 (4) — First appeal — Maintainability 1078
——Ss 100 101 — Finding of fact — Suit for possession — Concurrent finding of lower Courts that defendant and his predecessor in title were never in possession of suit land — Finding being one of fact has to be accepted in second appeal 369 C
——Ss 100 101 — U P Zamindari Abolition and Land Reforms Act (1 of 1951) Section 331 (1 A) — Suit for injunction restraining opposite party from interfering with possession instituted in Civil Court — Second appeal — Objection as to bar of civil Court jurisdiction under S 33 (1A) of U P Act — Objection when untenable 381 B
——S 100 — Finding of fact — Interference in second appeal 448 A
——Ss 100 101 — Second appeal — Finding of fact — Finding about embezzlement of amount by defendant — It is finding of fact 527 C
——S 100 — Second appeal — Finding of fact — Interference 856 D
——S 100 — Second appeal — No interference on findings of facts 1096 A
——Ss 100 101 — Finding of fact — Interference in appeal — Instance 1264 A
——S 100 — See also 856 A
——S 114 — Review — Scope of review is limited 116 B
——S 115 — Revision — Ex parte decree — Setting aside of — Hypothecation bond by judgment debtor — Acceptance of by Judge in exercise of his discretion — High Court declined to interfere in revision 342 C
——S 115 — Service of summons — Statement of process server disbelieved by trial Court — Finding as to non-service of summons by accepting defendants statement — Is finding of fact — Not to be interfered in revision 342 D
——S 115 — Evidence Act (1 of 1872) S 111 III (f) — Ex parte decree — Service of summons by registered post — Appreci

Civil P C (contd)
tion of evidence — Interference by High Court 342 E
——S 115 and Or 9 R 13 and O 29 R 2 (a) (U P) — Corporation sued through a specific officer thereof — Summons should be served on such officer — Breach of aforesaid procedure justifies setting aside of ex parte decree — No interference under Section 115 894
——S 115 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Act (13 of 1972) S 20 — Eviction proceedings — Dispute as to rate of rent — Finding of fact based on appraisal of evidence and did not call for interference 981 A
——S 115 — See 717 1157 B 1281 1395 D
——S 144 — See 973
——S 145 — Execution application to enforce liability under decree against surety — Maintainable — Surety is liable to pay decretal amount in case of default by judgment-debtor 76
——S 146 — See 1182 B
——S 148 — See 867 (SC)
——Ss 151 146 O 21 Rr 12 16 — Eviction decree — Execution — Substitution of assignee of decree for original decree holder in a pending execution — Permissible — It is not always necessary that assignee should launch a fresh execution proceeding 1182 B
——S 151 — See also 887 B 791 A 973 1073 B 1415 C
——Ss 152 and 153 — Correction of judgment or decree — Bona fide mistake or omission by Court — Latent ambiguity in judgment — It can be corrected under Section 95 of Evidence Act 785 A
——S 153 — See 785 A
——O 1 R 8 — See 399 A
——O 1 R 10 — Necessary party — What is not 1068 A
——O 1 R 10 O 22, R 9 — Impleading of party — Discretionary power of Court under O 1 R 10 — Exercise of 532
——O 1 R 10 — See also 399 B
——O 3 R 4 — Power of Advocate engaged is comprehensive — He can file restoration application on behalf of his client 1073 A
——O 6 R 2 — Variance between pleading and proof — Trial court held on facts was not justified in permitting plea to be set up for first time on date of judgment 943 A
——O 6 R 2 — See also 1056
——O 6 R 7 — Amendment of written-statement at appellate stage — No explanation for delay given — Amendment sought for

Civil P C (contd)
vague in nature and depriving opposite party fruits of decree — It cannot be allowed 399
——O 6 R 7 — See also 179 A B
——O 6 R 16 — See 1470 B
——O 6 Rr 17 and 7 — Pleadings — Party cannot file successive written statements 179 A
——O 6 Rr 17 and 7 — Amendment taking contradictory plea by withdrawing admissions made — Not permissible 179 B
——O 6 R 17 — Amendment of plaint — Amendment by way of addition to facts already on record to elucidate the matter and not in contradiction with them and not changing the case so as to make new claim on basis of new facts — Can be allowed 211
——O 6 R 17 — Eviction proceeding — Amendment of written statement — Plea of non-joinder raised at appeal stage 5 years after commencement of proceeding — Rejection of amendment — When justified 616
——O 7 R 7 — See 369 D
——O 7 R 11 — See 625 A I (SC) 717 1130 C 1446 A, B 1470 B
——O 8 R 5 (1) — Pleadings — Admission therein — Not conclusive 693 B
——O 8 Rr 6 A to 6 F (as amended by Amendment Act (104 of 1976)) — Counter claim — Entertainment of — Jurisdiction of Court to try subject matter of counter claim as separate action is condition precedent 363
——O 8 R 6 F — See 363
——O 9 R 4 — See 1298 A
——O 9 R 6 — Eviction proceedings under U P Act — Tenant absent on date fixed for hearing arguments — Passing of ex parte decree is valid 981 E
——O 9 R 6 (a) — Eviction proceedings — Tenant absent — Court proceeding ex parte and hearing arguments on same date — No illegality 981 D
——O 9 R 9 — See 178 (SC), 994
——O 9 R 13 — See 342 A, B, 894, 1073 B
——O 12 R 31 — See 780
——O 14 R 2 O 15 R 3 O 7 R 11 — Preliminary issue — Judgment on — Question whether or not plaint should be rejected under O 7 R 11 — It can be decided as preliminary issue 1130 C
——O 15 R 5 (U P) — Striking off defence — Trial Court not striking off defence in spite of non compliance of O 15 R 5 and granting decree for arrears of rent only — Striking off defence on remand by successor for default prior to earlier decree — Action is arbitrary 732
——O 15 R 3 — See 1130 C

Civil P C (contd)
——O 15 R 5 (inserted by U P Amendment Act (37 of 1972)) — Striking off defence — Validity 1395 A
——O 15 R 5 (inserted by U P Amendment Act (37 of 1972)) — Suit for eviction and arrears of rent — Striking off defence of tenant — Still tenant can be permitted to cross examine landlord s witnesses 1395 C
——O 15 R 5 — See also 981 C 1395 B 1428 A
——O 15 R 5 (1) (U P) — U P Urban Buildings (Regulation of Letting Rent and Eviction) Act (13 of 1972) S 30 (i) — Expression in any suit in O 15 R 5 (1) — Interpretation of — Covers also ancillary proceeding u/s 30 306 A
——O 17 R 3 — Suit for partition — Court deciding suit under O 17 R 3 on non appearance of parties — Court decreeing partition suit on basis of admissions in written statement — Absence of evidence demanding partition not fatal to suit — Order is valid 1342
——O 19 R 1 — Uncontroverted affidavit — It cannot be disbelieved in absence of inherent defects in it 455 B
——O 20 R 4 — Suit for declaration of title and recovery of possession — Both parties claiming exclusive title and possession of well defined and clearly demarcated suit land — Court cannot give finding that suit land partly belongs to the plaintiffs and partly to defendants 186
——O 21 R 1 — See 609
——O 21 R 2 (3) — Adjustment of decree — Compromise eviction decree — Execution 609 B
——O 21 R 12 — See 1182 B
——O 21 R 16 — Eviction decree — Pendency of execution — Sale of property — Mere omission to mention either the suit number or particulars of execution proceedings in the sale deed — Cannot invalidate the assignment as being vague 1182 C
——O 21 R 16 — See also 1182 B
——O 21 R 35 — See 582
——O 21 R 72 — See 271 (SC)
——O 21 R 92 S 151 — Inherent powers — Scope — Court can invoke inherent powers to meet ends of justice even where specific provisions exist in Code 791 A
——O 21 R 92 and R 110 (as added by Allahabad High Court) — Scope 791 B
——O 21 R 110 — See 791 B
——O 22 R 3 — See 25 B 178 (SC) 354
——O 22 R 4 — Survival of right to sue against surviving defendants 31 A

Civil P C (contd)
——O 22 Rr 4 11 — Appeal — Abatement of 1095
——O 22 R 4 (2) — See 780
——O 22 R 9 — See 354 532 1102
——O 22 R 11 — See 1095
——O 23 R 1 (3) S 148 — Permission to withdraw suit with liberty to file fresh suit granted on payment of costs to defendant — Fresh suit instituted without paying costs — Suit can be dismissed only if costs are not paid within reasonable time fixed by Court C R A No 37 of 1985 (Bom) Reversed 867 (SC)
——O 23 R 2 Explanation (as added by Allahabad High Court) and S 115 — Parties entering into compromise — Court recording joint statement of parties as regards settlement — Party challenging order recording statement in revision not challenging its correctness before Court nor in grounds of revision — Order of Court appointing receiver not interfered 297 B
——O 23 R 3 and Explanation (as added by Allahabad High Court) — Compromise — Validity — Parties reaching settlement — Court recording joint statement of parties and passing order in terms of settlement — One of the parties not signing order — It is not vitiated 297 A
——O 23 R 3 Explanation (as added by Allahabad High Court) and S 115 — Compromise between parties — Revision — One party alone taking objection that compromise was not in accordance with the scheme of Administration of trust — Parties having reached settlement for disposal of suit in a particular manner as recorded by court such kind of objection would not be entertained at the instance of lone person in revision 297 C
——O 26 R 14 — See 994
——O 29 R 2 (a) — See 994
——O 32 R 12 — Minor becoming major during pendency of proceeding — It is his discretion to appear before court — Non-appearance — Decision is binding on him 685 A
——O 33 R 1 — See 856 A
——O 33 R 2 — See 856 A
——O 34 R 5 — See 1415 C
——O 39 Rr 1 and 2 and O 1 R 10 — Representation suit for permanent injunction against interference with user of certain pasture land by residents of village — Necessary parties 399 B
——O 39 R 1 — Interim injunction — Grant of — Grounds 1130 A
——O 39 R 2 — See 399 B
——O 39 R 2 (2) Proviso Cl (c) (as inserted by U P Act 57 of 1976) — Temporary

Civil P C (contd)

injunction — Cannot be granted to restrain election 460 A

——O 36 R 2 (2) Proviso Clauses (d) (e) (as inserted by U P Act 27 of 1976) — Provisions under Cls (d) and (e) are not tendentious to each other 460 B

——O 39 R 2A — See 153

——O 41 R 20 — See 947

——O 41 R 23 — See 108

——O 41 R 27 O 42 R 1 O 41 A R 1 (as added by All High Court) — Second appeal — Additional evidence — Court can permit the party to adduce additional evidence 160 A

——O 41 R 27 — Second appeal — Additional evidence — Affidavits of a party discarded simply on technical grounds — Court held was justified in admitting additional evidence 160 B

——O 41 R 33 — Land Acquisition Act (1 of 1894) Ss 23 (2) and 28 (as amended by Act (68 of 1984)) — Appeal by Collector against award passed by Tribunal — During pendency of appeal Ss 23 (2) and 28 amended — Prayer by claimants that amount of solatium interest pendente lite and future deserves to be enhanced in view of amendment 1155

——O 41 A R 1 — See 160 A

——O 42 R 1 — See 160 A

——O 43 R 1 (c) — See 994

——O 47 — See 877

——O 47 R 1 — See 576

Civil P C (Amendment) Act (104 of 1976)

——S 97 — Civil P C (5 of 1908) O 21 R 72 (as amended in U P before 1976) and R 72A — R 72 (as stood in U P before 1976) does not remain in force in view of addition of R 72A in O 21 by Amendment Act retaining sub rules (2) and (3) of R 72 and overriding effect given to amended provisions by S 97 of the C P C (Amendment) Act (1976) after the said Act came into force — Fact that no amendment was made to R 72 by the Amendment Act is irrelevant C M W P No 9754 of 1981 D/ 9 4 1985 (All) Reversed 271 (SC)

Conduct of Election Rules (1961)

——R 4 — See 1521

——R 63 — See 1460 A

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (52 of 1974)

See under Public Safety

Consolidation proceedings

——Transfer of land — See 576 B

Constitution of India

——Art 14 — Discriminatory nature of provision — Provision once valid may in course of time become discriminatory 1168 C (SC)

——Art 14 — University condoning shortage in attendance of some candidate by applying old rules — Denial of this benefit to others who were similarly situated by applying new rules — Authorities acted arbitrarily 1513 B

——Art 14 — See also 96 A 224 477 C 561 B 972 1168 A (SC)

——Art 19 (1) (g) — See 535 A

——Art 19 (6) — See 535 A

——Arts 21 and 22 (2) — Personal liberty — Violation of — Police though obtaining remand of arrested person not producing him before Magistrate within requisite period — There is gross violation of his rights under Arts 21 and 22 (2) 653 A (SC)

——Arts 21 22 (2) and 32 — Arrest with mischievous and malicious intent — Victim can be compensated by awarding suitable monetary compensation in appropriate cases — Arrest of member of Legislative Assembly while en route to seat of Assembly — Resultant deprivation of right to attend impending Assembly Session — Compensation of Rs 50,000/ awarded 653 B (SC)

——Arts 21 22 (2) — Personal liberty of citizen — Police officers must show greatest respect for it 653 C (SC)

——Arts 21 20 A — Person accused of offence involving jeopardy to his life or personal liberty — Entitlement to free legal aid — Not dependent on his making application 774 (SC)

——Art 21 — Speedy trial — Necessity to set up adequate number of Courts and to appoint requisite number of judges stressed 1369 H (SC)

——Art 21 Sch 7 List 2, Entry 1 — Police Act (5 of 1861) Ss 13 16 — Petitioner holding cattle fair on his land — Deployment of Police force by State without any request of petitioner for maintaining law and order — Demand of expenses of deployment by station officer from petitioner — Not sustainable in law 1157

——Art 21 — See 1319 1369 F G (SC)

——Art 22 — See 1196

——Art 22 (2) — See 653 A B C (SC)

——Art 22 (5) — Order of detention — Validity 498 F

——Art 22 (5) — See 94 A B 391 397 A (SC) 899 916 A B (FB) 1172 1227 A 1522 B, D

Constitution of India (contd)

——Art 22 (6) — See 1,22 C

——Arts 25 26 and 32 — Shifting of graves — Court has simple powers in public interest — No violation of religion 1368 (SC)

——Art 26 — See 1368 (SC)

——Art 32 — Public interest litigation — Petition for release of children below 16 years detained in jails — Direction by Supreme Court — Non compliance by some courts — Further directions issued 1369 C (SC)

——Art 22 — See also 653 B (SC) 1368 (SC)

——Art 39 (f) — Children Act — Though passed not enforced in some States — Supreme Court directed that such beneficial statute should be brought into force and administered without delay 1369 A (SC)

——Art 39 (f) — Children below 16 years — Detention in jails deprecated 1369 D (SC)

——Art 39 (f) — Juvenile Courts — Children trial of — Must take place in juvenile courts and not in criminal courts — Special cadre of Magistrates for juvenile Courts recommended 1369 E (SC)

——Arts 39 (f) 21 — Children — Speedy trial — Necessity emphasised 1369 F (SC)

——Arts 39 (f) 21 — Children — Trial of — Uniform Children Act throughout India instead of Children Acts at State level and its earnest implementation recommended 1369 G (SC)

——Art 39 (b) (c) — See 112 A

——Art 39 A — See 774 (SC)

——Art 136 — Safai Jamadar in High Court dismissed from service denying all retiral benefits — 20 years of service rendered by Jamadar at time of dismissal — Held there was scope for taking lenient view — Order of dismissal converted into one of compulsory retirement to ensure him retiral benefits C M W P No 9279 of 1980 D/ 18 5 1981 (All) Partly Reversed 285 (SC)

——Art 141 — Supreme Court decision — Binding nature of 116 C

——Art 141 — See also 703 B

——Art 166 (3) — See 558 D

——Art 191 (1) — Representation of the People Act (43 of 1951) S 100 (1) (d) (i) — Teacher in Higher Secondary School — Not disqualified from contesting election to legislative Assembly 507

——Arts 199 200 and 212 — U P Tendu Patta (Vyapar Vinivaman) (Sanshodhan) Adhiniyam (5 of 1980) S 5 — U P Act is not invalid on ground that it was in breach of Art 199 (4) — Vacancy occurring in office of speakership by his resignation — Deputy Speaker performing his duties certifying under Art 199 (4) that it was money bill — Held that Act was validly passed 585 B

——Art 212 — See 582 B

——Art 215 — Contempt of Courts Act (70 of 1971) S 2 (a) (b) — Wilful disobedience — Writ petition challenging cancellation of select list for appointment of conductors — High Court directing appointments to be made according to names mentioned serially in list — Disobedience of — Effect 61

——Art 225 — See 41

——Art 226 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Act (13 of 1972) Ss 21 and 22 — Appellate Court deciding release application under Section 21 of U P Act in favour of Landlord — Comparative convenience and hardship of parties inadequately considered — Findings recorded by it are findings of fact 74

——Art 226 — Certiorari — Writ in the nature of — Issue of — When open 1979 All Rent Cases 397 Reversed 84 A (SC)

——Art 226 — Writ petition — Conduct of party 68 B

——Art 226 — U P State Universities Act (10 of 1973) S 28 — Allahabad University Admission Rules 1984 Rr 1 and 3 — Admission to post-graduate studies — Re admission of candidates who were previously admitted and had discontinued their studies wrongly cancelled by authorities subsequently — Order of cancellation cannot be quashed by High Court 135 B

——Art 226 — Civil P C (1908) Order 9 R 9 and O 22 R 3 — Writ petition — Abatement for failure to bring legal representatives of deceased on record within time — Subsequent application for setting aside abatement — Held petitioners being persons from rural area application allowed W P No 1980 of 1975 D/ 3 5-1983 (All) Reversed 178 (SC)

——Art 226 — U P Zamindari Abolition and Land Reforms Act (1 of 1951) Section 122 A (D) — Certiorari — Grant of lease — Board of Revenue directing S D O to initiate fresh proceedings for auction of fishery rights stayed by High Court — Lease granted during pendency of writ petition without getting order of stay vacated — Order granting lease liable to be quashed 188 B

——Art 226 — Admission to post graduate course — Student filing a photostat copy of forged mark sheet with admission form — Overwriting in copy of mark sheet not explained — Held if opportunity of hearing was not given before cancelling admission

Constitution of India (contd)
nothing unfair could be inferred therefrom 286

——Art 226 — U P Gaon Sabha and Bhum Prabandhak Samiti Manual Paragraphs 128 131 — Writ petition — Maintainability — Non compliance of provisions of Paras 128 131 — Not fatal to the presentation of the writ petition 293 A

——Art 226 — Writ petition against judgment of revisional authority under U P Consolidation Act — Maintainability 293 C

——Art 226 — Writ — New plea — Suit for ejectment and arrears of rent — Points regarding default in payment of rent within S 20 (2) (a) of U P Act (13 of 1972) and Water tax and unlawful deposit of amount of rent u/s 30 — Points cannot be raised for first time in writ petition 306 B

——Art 226 — Writ petition — Maintainability — Statutory remedy of appeal not exhausted by petitioner — Petition not maintainable in absence of good reasons 315 B

——Art 226 — Finding of fact — Interference with — Findings about continuous possession against consent of true owner and otherwise than in accordance with law for more than period prescribed for maturing rights under S 210 of U P Act 1 of 1951 — Are findings of fact — Same cannot be interfered with 351 B

——Art 226 — U P Muslim Wakfs Act (16 of 1960) Ss 33 and 49-B — Order of Collector asking appellant to vacate land as it was wakf property — Delay in filing appeal and revision — Condonation — Interference 425 A

——Art 226 — Post Graduate Medical Course — Prohibition for prosecuting simultaneously two courses of studies in different medical college — Does not apply when student is prevented from prosecuting studies in one of the Colleges 428 A

——Art 226 — Restoration of case after granting of opportunity to party — High Court under Art 226 will be loath to interfere with order 458 B

——Art 226 — Point requiring investigation into questions of fact not raised in lower Court — Point cannot be raised for first time in Art 226 petition 465 B

——Art 226 — Accused alleged to have committed crime — Police investigation in progress — High Court cannot interfere under Art 226 in the facts and circumstances 470

——Arts 226 and 14 — U P Co operative Societies Act (11 of 1966) S 29 (4) (b) — Order passed by Registrar removing petitioner — Administrator from his office and replacing with District Magistrate — Validity 477 C

——Art 226 — Writ petition against executive action — Limitation 526 (SC)

——Art 226 — Procedure — Finding in previous writ petition — Binding nature of 558 A

——Art 226 — Petition challenging validity of competitive examination as not held as per law — Petitioner appearing for examination without protest — Petition filed on realisation that he would not succeed — Relief ought not to be granted to petitioner 1985 All CJ 541 **Reversed** 662 C (SC)

——Art 226 — Practice and procedure — Specific paragraph of writ petition not controverted in counter affidavit — Allegations therein to be assumed as correct 683 C

——Art 226 — U P (Temporary) Control of Rent and Eviction Act (3 of 1947) S 3 (1) (c) — Writ jurisdiction — Scope — Allegations of material alteration by constructing Marhiyas on road leading to premises blocking the passage — No evidence that said Marhiyas were of mud and were of temporary nature liable to be removed without damaging premises — Such controversy cannot be decided by High Court in exercise of its extraordinary jurisdiction under Article 226 because evidence will have to be adduced — Case remanded back to lower Court to decide it afresh 703

——Art 226 — Education — Admission to B Tech Course — Resolution giving 5% weightage to sons and wards of defence personnel — Admission could not be sought on ground of said resolution 743

——Art 226 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Act (13 of 1972) S 21 — Writ Petition — Subsequent events during pendency of — Effect 788

——Art 226 — Notices issued to Managing Committee of Co operative Bank by Deputy Registrar to show cause why it should not be superseded — Writ petition against — Maintainable 802 A

——Art 226 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Act (13 of 1972) S 16 — Powers under — Exercise of — Allotment of shops 812

——Art 226 — Allahabad Rules of Court (1952) Chap V R 10 (1) — Special appeal against decision of single Judge in writ petition — Maintainability 816

——Art 226 — Powers of High Court under — Orders by Consolidation Authorities declaring certain person to be co-sharer of land — Subsequent compromise — Co-sharer gave up his claim — Finding that al-

Constitution of India (contd)
leged compromise was fictitious not erroneous — Interference by High Court under Art 226 not called for 860 C
——Art 226 — Finding of facts — Interference with 869 B
——Art 226 — Powers under — Exercise of — If order is without jurisdiction it should not be quashed so as to restore illegal order 908 B
——Art 226 — Transfer of Property Act (4 of 1882) S 106 — Eviction of tenant — Trial court coming to conclusion that notice under S 106 of T P Act was served on tenant petitioner — Finding of fact cannot be assailed in writ proceedings 970 A
——Art 226 — Writ jurisdiction — Finding on issue whether need of premises by landlady was bona fide or not being one of fact cannot be interfered in writ jurisdiction unless vitiated by error of jurisdiction or breach of principles of natural justice 1043 A
——Art 226 — Territorial jurisdiction — Complaint filed at place B — Writ petition for quashing same filed at A — Respondents neither residing nor carrying on business within territorial jurisdiction Court at A — High Court cannot exercise powers under Art 226 1093 A
——Art 226 — Merit Promotion Scheme by Banaras Hindu University Para 2 (a) — Promotion scheme for teachers — Eligibility 1111 A
——Art 226 — Merit Promotion Scheme by Banaras Hindu University Para 2 (a) — Promotion scheme for teachers — Candidate not selected for promotion in mutual presentation entitled to submit his work again after a lapse of one year — Gap of one year — Determination 1111 B
——Art 226 — Case requiring investigation into disputed questions of facts — Exercise of extraordinary jurisdiction under Art 226 would not be appropriate 1130 B
——Art 226 — Natural justice — Lecturer in College — Order reducing his salary — No opportunity of hearing given prior to passing of order — Order deserves to be quashed 1138 B
——Art 226 — Writ petition — Petitioner seeking High Courts discretion by extraordinary remedy with unclean hands and material suppression of facts — His writ petition must fail 1175 A
——Art 226 — Writ petition — Special costs — Petitioner harassing respondent State by requiring it to answer petition based on false averments — He will pay special costs 1175 B

Constitution of India (contd)
——Art 226 — Writ jurisdiction — Question of fact — Finding of lower Courts that disputed sale deed had been duly executed — Same deserve to be accepted — High Court ought not to go into disputed questions of fact 1182 A
——Art 226 — Alternative remedy — Custodian of enemy property after holding certain enquiries coming to conclusion that properties in question were enemy properties which vest in him — Objectors claiming to be tenants in said properties alleged to be belonging to a waqf — Custodian can initiate appropriate proceedings 1231
——Art 226 — Civil P C (5 of 1908) S 115 — Res judicata — Suit for eviction and arrears of rent — Ex parte decree striking off defence of tenant under O 15 R 5 — Revision under S 25 Provincial Small Cause Courts Act against order rejecting application of tenant under O 9 R 13 dismissed — Revision under S 115 against order under S 25 also dismissed — Held tenant cannot invoke Art 226 1281
——Art 226 — Civil P C (5 of 1908) O 9 R 4 — Writ petition — Restoration application — On date of hearing counsel for petitioner dead — Disposal of petition — Held petitioner deprived of opportunity of hearing — Restoration application allowed 1298 A
——Art 226 — U P Land Revenue Act (3 of 1901) S 28 — Writ petition — Maintainability — Application under Section 28 — Order passed on application under Section 28 do not decide title of parties — Petition against that order — Not maintainable 1298 C
——Art 226 — Guardian and Wards Act (8 of 1890) S 25 — Habeas Corpus — Custody of children 1353 A
——Art 226 — Habeas Corpus petition — Custody of children — Petition on ground of illegal detention 1353 B
——Art 226 — Public interest litigation — Petition by a social worker seeking release of children below 16 years detained in jails — Not adversary litigation 1369 B (SC)
——Art 226 — Education — Admission to the Diploma Course in the Medical College — Student cannot be allowed to pursue two diploma courses simultaneously — But no bar for applying for another diploma course 1414
——Art 226 — An alternative remedy is not an absolute bar for the exercise of the powers under Art 226 1485 B
——Art 226 — Public interest litigation — Locus stand — Even if the petitioners are not personally aggrieved and the interest of

Constitution of India (contd)
the public is involved a citizen can maintain the writ petition 1485 C
——Art 226 — Petition under — Petition challenging detention — Counter-affidavit by detaining authority required only when mala fide is alleged 1322 F
——Art 226 — See also 70 A 293 B 328 A (FB) 455 C 616 B 742 680 769 C, 845 (FB) 940 943 B 963 970 B 1187 1232 A B 1270 B 1358
——Art 227 — Civil P C (5 of 1908) Section 9 — Issue raised in suit was subject-matter of writ petition filed earlier by plaintiffs — High Court declined to go into question — Suit barred under S 9 — Pending plaint of suit quashed 1200
——Art 227 — See also 1157 B 118
——Art 254 (1) — See 710 A
——Art 265 — See 585 C
——Art 265 Sch 7 List 2 Item 56 — U P Tendu Patta (Vyapar Vinyaman Adhiniyam (19 of 19.2) S 5 (3) (as amended by Act 5 of 1980) — Transport of tendu leaves — Levy of tax on persons to whom permits were granted — Levy is illegal 585 D
——Art 265 — See also 96 C 871 B 1213 B
——Art 301 — See 585 C
——Arts 304 (b) 301 and 255 — U P Tendu Patta (Vyapar Vinyaman) (Samshodhan) Adhiniyam (5 of 1980) Section 5 — Sale of Tendu leaves — Restrictions 585 C
——Sch 7 List 2 Entry 1 — See 1457
——Sch 7 List 2 Item 56 — See 585 D
——Sch 7 List 3 Entry 77 — See 710 B

Contempt
——What does not amount to — See 5

Contempt of Courts Act (70 of 1971)
——S 2 (a) — Application by petitioner before Services Tribunal for various reliefs — Services Tribunal passing interim order — Direction by Services Tribunal to A D M to pay petitioner's salary for month of December and for subsequent months as and when due — Prayer by petitioner before A D M to pay salary since the date he was relieved — A D M rejected prayer of petitioner — A D M cannot be held guilty of disobeying directions of Tribunal 1484
——S 2 (a) — Initiation of proceedings — Decree for possession — Order of stay of execution of decree — Decree-holder taking forcible possession without putting decree in execution — Proceedings for civil contempt cannot be initiated — Remedy will lie under criminal law 1483

Contempt of Courts Act (contd)
——S 2 (a) (b) — See 613
——Ss 2 (b) 12 — Contempt — Meaning of 5
——S 2 (b) — Civil contempt — Order directing that petitioner should not be dispossessed from disputed land — Mere harassment and effort to dispossess by alleged contemner — Petitioner not actually dispossessed — No contempt is made out — Forcible taking away of some articles belonging to petitioner does not amount to his dispossession 1413
——Ss 4 13 — Proceedings for civil contempt — Mandatory direction given to Nagar Mahapalika through its Administrator — Deputy Administrator of Nagar Mahapalika cannot be held guilty for disobeying directions even if Administrator has not complied with directions 1459
——S 10 — Jurisdiction under — Disobedience of order passed by the subordinate Court — Not the High Court but the subordinate Court should take cognizance of the offence 133
——Ss 12 20 — Civil contempt — Issue of notice to opposite party to show cause why petition not be admitted — Do not amount to initiation of proceedings 123
——S 12 — See also 5
——S 13 — See 1469
——S 20 — Civil contempt — Limitation — Application for initiating proceedings for civil contempt filed within time — Proceedings for civil contempt not initiated within period of one year from date of commission of contempt — Application fails and jurisdiction of Court barred for initiation of proceedings thereafter 1517
——S 20 — See also 1239

Contempt proceedings
——Exemplary costs — Awarding of — See 5

Contract Act (9 of 1872)
——S 55 — Contract relating to sale of immovable property — Normal presumption is that time is not essence of contract 693 C
——S 56 — Contract — Doctrine of frustration — Does not apply to self inducted frustration 693 D
——S 128 — See 76 621 (SC)

CO OPERATIVE SOCIETIES
——Administrator of Bank — Removal — Hearing not necessary — See 477 B
——Recovery certificate — Hearing to member before issuance — See 570
——Recovery of loans — Amount embezzled by official of society cannot be recovered — See 616 A

Co operative Societies (contd)
—U P Co operative Societies Act (11 of 1968)
——S 29 — See 802 B
——S 29 (4) — Order passed by Deputy Registrar replacing petitioner Administrator of Bank with the District Magistrate — Termination not wrongful 177 A
——S 29 (4) (6) — U P Co operative Societies Rules (1968) Rule 440 (1) Second Proviso — Co operative Society — Election — Power of Registrar to extend time schedule — Not absolute 1445
——S 29 (4) (b) — See 477 C
——Ss 29 (4) (5) (6) 35 (3) (4) (5) (6) — Order passed by Registrar replacing petitioner-Administrator of Bank with District Magistrate — Petitioner not afforded any opportunity of hearing — Principle of natural justice not violated 477 B
——Ss 35 29 — Scope of — Supersession of Management Committee of Co operative Bank 802 B
——S 35 — Supersession of Managing Committee of Co operative Bank — Held charge that Managing Committee had been remiss in performance of duties was framed mechanically and could not be taken into consideration in determining question of supersession of Committee 802 C
——S 35 — Supersession of Managing Committee of Co operative Bank — Vague allegation — No action can be taken against Committee under S 35 802 D
——S 35 — U P Co operative Societies Rules (1968) R 115 — Charge against Chairman of various Advisory Committees — Management Committee — Responsibility 802 E
——S 35 — Supersession of Management Committee of Co operative Bank — Accusation when falls outside purview of S 35 802 F
——S 35 — Managing Committee of Co operative Bank — Supersession — Accusation by Deputy Registrar — Validity 802 G
——S 35 — Charge against Managing Committee of Co operative Bank that Bank was in arrears of payment of instalment of advances from Apex Bank — Held on facts that charge does not avail for taking action against Committee under S 35 802 H
——S 35 — Question of supersession of Managing Committee of Bank — Determination 802 I
——S 35 — Initiation of proceeding for supersession of Management Committee of Co-operative Bank — Vague charge — Supersession cannot be initiated on basis of such charge 802 J
——S 35 — See also 802 A
——S 35 (3), (4), (5), (6) — See 477 B

Co operative Societies — U P Co operative Societies Act (contd)
——S 70 — Dispute as to whether debtors were liable to pay amount claimed by society — Arbitrator cannot pass order for recovery of amount from cashier 747
——S 70 — Dispute between societies referred and it has to be referred to arbitration — However held on facts that jurisdiction of Civil Court was not barred 1068 B
——S 95 A — Recovery of amount under — Loans advanced by Society can be recovered under S 95 A — Amount alleged to have been embezzled by official of society cannot be recovered under this section 616 A
——S 95 A (1) — Recovery of claim by Agricultural Co-operative Society — Registrar bound to inform and hear member before issuing recovery certificate 570
——S 95-A (1) — Issue of recovery certificate under — Opportunity to place his version before Registrar to be given to debtor — Failure of Registrar to afford such opportunity — Recovery proceedings vitiated 616 B
——Ss 122 128 — U P Co operative Societies Regulations 1975 Regn 86 — Order terminating services of salesman of Co-operative Society — Interference by Registrar for cancelling termination — Registrar could not interfere and cancel termination as there was no statutory provision to that effect 70 B
——S 122 (1) — U P Co-operative Societies Rules (1968) R 389 (A) — Order terminating services of salesman working in Co-operative Society — Writ petition — Maintainability 70 A
——S 128 — See 70 B
—Uttar Pradesh Co operative Societies Regulations (1975)
——Regn 86 — See 70 B
—Uttar Pradesh Co-operative Societies Rules (1968)
——R 115 —See 802 E
——R 389 A — See 70 A
——R 440 (1) Proviso 2 — See 1445

Counter claim

——Jurisdiction to entertain — See 363

Court fees Act (7 of 1870)

See under Court fees and Suits Valuations

COURT-FEES AND SUITS VALUATIONS

—Court fees Act (7 of 1870)
——S 7 (iv-A) (as applicable to U P) — Will is instrument which secures property in favour of beneficiary concerned 86

Court fees & Suits Valuations — Court fees Act (contd)

——S 8 — See 887 A

——S 12 (as applicable in U P) — Lower Court deciding that suit has been properly valued — Appellate court coming to conclusion that lower court was wrong in its decision about valuation of suit — Effect 1124 A

——S 12 (as applicable in U P) — Right of private party to question correctness of decision of court relating to valuation simpliciter for purpose of court fees 1124 B

Cow slaughter

——Ban on — See 73 A

Criminal Law Amendment Act (46 of 1952)

See under Public Safety

Criminal Procedure Code (2 of 1974)

——S 6 — See **1369 H (SC)**

——Ss 11 (1) Proviso and 14 (3) — Special Court of Judicial Magistrate established by State with its place of sitting at Allahabad to try specified cases — Court of Session conferred with powers in relation to such cases would be Sessions Court at Allahabad 346

——S 14 (3) — See 346

——Ss 31 (1) 31 (2) Proviso — Official Secrets Act (19 of 1923) S 3 — Penal Code (45 of 1860) S 120 B — Conviction under — Sentences ordered to run consecutively — Aggregate of consecutive sentences passed shall not exceed 14 years — Aggregate sentence of 28 years passed is hit by Proviso to S 31 Cr P C 1177

——S 41 — See 470

——S 82 — See 470

——S 83 — See 470

——S 125 — Maintenance — Muslim wife — Dissolution of marriage under Dissolution of Muslim Marriages Act 1939 — Maintenance can be granted to her under S 125 Criminal Misc Case No 822 of 1978, D/ 20 10-1978 (All), **Reversed** **281 (SC)**

——Ss 125 421 (1) — Realisation of amount of maintenance — Property of husban attached and kept with supardar — Supardar failing to produce property attached for sale — Directions by Magistrate to attach property of supardar — Illegal 303

——S 125 — Claim for maintenance — Suit by husband for restitution of conjugal rights decreed — Maintenance cannot be granted 1953 Cri LJ 432 (Saurashtra) Diss from 1096 B

Criminal P C (contd)

——S 125 — Application for maintenance — Offer by husband in written statement to keep his wife with him — Held on facts was not genuine and was made to defeat the claim for maintenance 1199

——S 125 — See also 675 A

——S 125 (3) Proviso — Offer to maintain — Cannot be made at the time of execution and enforcement of order under S 125 675 B

——S 125 (3) — See also 675 C

——Ss 128 and 125 — Order for maintenance — Can be enforced by any Magistrate 675 A

——S 145 — Recording of final order — Magistrate giving reasons in preliminary order for holding that breach of peace caused — It is not necessary to repeat same finding while recording final order 357 A

——S 145 — Proceeding under — Revival of — Validity 722

——S 145 — Fact of actual possession — Determination 836

——S 145 — See also 357 B 1519 A

——S 145 (4) Proviso — Enquiry u/s 145 (4) — Magistrate not in a position to record finding as to possession of any party on date of preliminary order — He has to further record finding as to whether any party was wrongfully dispossessed within two months next before date of report of police 1236 C

——S 146 (1) — Question of possession — Police report cannot fall in category of evidence within meaning of S 3 of Evidence Act and hence Magistrate cannot rely upon police report alone while deciding question of possession 1236 A

——S 146 (1) — Possession on date of passing preliminary order but also includes notional or fictional possession referred to in proviso to S 145 (4) 1236 B

——S 154 — FIR — Contents of 1976 All WC 495 **Reversed** **175 B (SC)**

——S 154 — F I R — Chaukidar recording oral statements made by informant — Informant made complainant — Inherent infirmity in F I R — Fact that informant puts his thumb impression on the paper after the matter was being read over to him does not cure inherent infirmity 1003 A

——S 154 (1) — First informant — Right of hearing 821 B

——S 156 — See 1535

——S 157 — See 550 B

——S 158 — See 550 B

——S 162 — See **768 A (SC)**

——S 195 (1) (b) (ii) — Complaint before Magistrate that alleged sale deed was executed by accused impersonating complainant —

Criminal P C (contd)
Complainant subsequently filing suit to set aside sale deed — It was not shown that sale deed was filed in original in civil Court — Held that there was no suit pending which cognizance was taken and hence bar under S 195 (1) (b) (ii) was not attracted 727
——Ss 195 (1) (b) (ii) 156 — Bar under provisions of S 195 (1) (b) (ii) — Does not preclude the police officer from investigating and collecting evidence or material if any during the course of investigation under Section 156 of the Code 1335
——S 197 — Sanction to prosecute — Accused a Sales Tax Officer — Offence committed during discharge of official duty — Sanction necessary 81
——Ss 202 203 397 — Complaint case — Statements of complainant and witnesses recorded under S 202 — Order of dismissal in default cannot be passed thereafter — Order of dismissal in default is not interlocutory order — Revision against is maintainable 1427
——S 202 (2) Proviso — See 719 D
——S 203 — See 1427
——S 204 (2) — See 719 A
——S 220 — Joint trial — Dacoity — Dacoity at different houses committed at one and same time in single process within small periphery during period of one hour — Intention of dacoits to loot as many houses with in as short duration as possible — Joint trial of accused in such case was justified 300 A
——S 223 — See 663
——S 227 — Penal Code (45 of 1860) Sections 302 34 — Murder by poisoning — Prosecution to show grave suspicion against accused — Ingredients of S 302 not shown by material on record — Discharge of accused justified 1192 A
——S 228 — See 282
——S 294 (3) — Postmortem report — Admissibility 1003 C
——S 300 (1) — Prevention of Food Adulteration Act (37 of 1954) S 23 — Prevention of Food Adulteration Rules (1955) R 50 — Accused already convicted under S 299 of U P Municipalities Act (1959) for not possessing licence for sale of Biscuits Namkins — He cannot be prosecuted again for same offence that is for breach of R 50 1319
——S 301 (2) — Ex parte order for bail in proceedings before High Court in appeal — Validity 1284
——S 304 — See 774 (SC)
——S 311 — See 527 B
——S 313 — Statement of accused — Charge of murder — Prosecution failing to establish its case — Accused pleading exception as contained in S 100 of I P C but failing to discharge burden lying upon him u/s 105 of Evidence Act — Statement of accused — How to be used 249 B
——S 313 — Penal Code (45 of 1860) Section 412 — Offence under — Statement of accused under S 313 Cr P C — Cannot be ignored but is to be given due weight and adequate emphasis while recording guilt against him — Failure of Court to give due consideration to statement of accused — Effect 1163 B
——S 313 — See also 1035
——S 319 (1) — Applicability — Withdrawal of case against accused — He stands discharged — Cannot be summoned to face trial on same charges 1341
——Ss 323 223 399 & 401 — Penal Code (45 of 1860) Ss 307 and 323 — Case under S 307 against accused pending in Sessions Court — Accused filing complaint under S 323 before Magistrate against complainant in Sessions case — Magistrate exercising discretion under S 323 Cr P C not to commit case to Sessions as it was not cross case — Revisional order of Sessions Judge directing Magistrate to commit case held was improper 683
——Ss 326 228 — Recording of evidence — Mere framing of charge under Sec 228 does not amount to recording of evidence wholly or partly under S 326 — Transfer of Judge to another court only after framing of charge — His jurisdiction in the case ceases 282
——S 368 — See 41
——S 369 — See 41
——S 374 — See 1438 C
——S 378 — See 41 1035
——Ss 385 386 — Hearing of appeals — Procedure — Appeal against conviction — Perusal of record obligatory — Record burnt due to fire in record room — Court declined to affirm conviction 1433
——S 386 — Appeal to High Court against conviction of accused u/s 302/34 by Sessions Court — Conviction set aside by High Court disbelieving FIR and evidence on flimsy grounds — Two views on evidence on record were not possible — Reversal of judgment and acquittal of accused by High Court was illegal Decision of Allahabad High Court Reversed 275 A (SC)
——S 386 — Prevention of Corruption Act (2 of 1947) Ss 5 (1) (d) and 5 (2) — Trial of police constable for accepting bribe — Trial Court accepting defence version that currency notes were inserted in his pocket without his knowledge — High Court reject-

Criminal P C (contd)
ing defence version and convicting accused — Held on facts reversal was illegal Criminal Appeal No 11 of 1975 D/- 8-7 1976 (Guj) Reversed 651 (SC)

——Ss 366 378 313 — Appeal against acquittal — Powers of appellate Court — Appreciation of evidence 1066

——S 386 — Conviction of accused under Ss 5 (1) (d) 5 (2) and Ss 420 468 491 of Penal Code — No valid sanction obtained — Appeal — Conviction and sentence set aside by High Court in appeal — Permission of High Court sought for launching fresh prosecution after obtaining sanction — Permission also sought for drawing departmental proceedings — Held permission could not be granted after lapse of about 13 years which would only aggravate the agony of accused 1528 C

——S 386 — See also 1433

——Ss 397 451 457 — Custody of stolen property during investigation — Magistrate passing order delivering property to accused when matter was in first stage of investigation — Order will not fall under S 451 — Order is fully covered by S 457 821 A

——S 397 — See also 1427

——S 397 (2) — Accused charged under Ss 323 325 308 Penal Code — Dropping of proceedings under S 308 by Magistrate — Order is revisable 737 A

——S 397 (2) — Revision under — Challenge as to genuineness of record sent by Sarpanch to Court — Issue of notice to Sarpanch — Application by Sarpanch for rejection of application challenging genuineness of record — Rejection of — Rejection order is interlocutory order — Revision barred by S 397 (2) 1258 C

——Ss 399 and 145 — Powers of Court under S 399 — Finding of trial Court based on evidence ought not to be disturbed 1519 A

——S 399 — See also 683

——Ss 401 and 145 — Decision of Magistrate as to factum of possession in proceedings under S 145 — Existence of evidence in support of decision — High Court cannot interfere with decision of trial court 357 B

——S 401 — Revision — Order by Magistrate dropping proceedings under Sec 308 IPC — Sessions Judge setting it aside and framing charge under S 307 IPC against accused — Order not liable to be interfered in revision 737 B

——S 401 — Revision — Point neither raised in grounds put forward in memo of revision nor pressed before trial court — High Court declined to interfere 1192 B

Criminal P C (contd)
——S 401 — See also 683 1438 C

——Ss 421 and 125 (3) — Arrears of maintenance amount — Can be realised by attaching salary of the husband 675 C

——S 421 (1) — See 303

——S 436 — See 1256

——Ss 437 439 — Plea of right of self defence — Accused and his son receiving number of injuries — Non mention/explanation thereof in FIR — Bail could be granted to accused 863 A

——Ss 437 439 — Bail — Grant of — Principles — English law — Not applicable 863 B

——S 437 — Grant of bail — Offence alleged under S 307 IPC — Held on facts that from the medical reports it could not be assumed that injuries were dangerous to life — Held considering statements under Section 161 Cr P C that case for bail was made out 1186

——Ss 438 439 — Bail — Grant of in appeal — Murder — Conviction by trial Court — Evidence of prosecution witnesses and dying declaration by deceased wife that husband burnt her found reliable — Accused husband not on bail during trial — Bail not granted 1438 A

——S 439 — Grant of bail — Second application on grounds which were not urged before — Bail could be granted 550 A

——Ss 439 157 and 158 — Grant of bail — Provisions of Ss 157 and 158 are mandatory 550 B

——S 439 — Grant of bail — Applicant neither surrendering before Magistrate nor before Sessions Court — His bail application cannot be considered 607

——S 439 — Grant of bail — Considerations — Past criminal history — Person cannot be said to have no criminal history because he is not convicted in a case 679 A

——S 439 — Grant of bail in non-bailable offences — Principles for 1253 B

——S 439 — Third bail application — Earlier two applications for bail rejected — Entire new facts brought on record which were not in existence in first and second application — Bail granted 1504

——S 439 — See also 363 A B 1256 1438 A

——S 439 (1) — Penal Code (45 of 1860) S 396 — Grant of bail — Offence alleged under S 396 I P C — Ground alleged for grant of bail that no identification parade was held — Investigation still in progress — Bail when not to be granted 1211

——S 451 — See 872 A

——S 457 — See 821 A

Criminal P C (contd)

——S 464 — Arms Act (54 of 1959) Section 25 — Conviction under — Non specification of all articles recovered from accused in charge — No prejudice caused to accused by non specification — Conviction cannot be faulted 306 B

——Ss 460 470 — Limitation for taking cognizance of offence — Extension of — Complaint case 828

——S 473 — See 828

——S 482 — Inherent powers — Exercise of 3

——Ss 192 401 374 — Conviction for murder — Life imprisonment awarded — Bride burning case — Appeal against with prayer for bail — High Court in exercise of its inherent powers issued show cause notice for enhancement of sentence of life imprisonment to that of death 1438 C

Criminal Trial

——Free legal aid — Right of accused — See 774 (SC)

Customs Act (52 of 1962)

——S 135 — See 346

Dacoity

——Joint trial — See 300

DEBT LAWS

—Uttar Pradesh Debt Relief Act (4 of 1977)

——S 2 (6) — See 969 B

——S 2 (9) — See 969 A

——Ss 4 2 (9) — Petitioner Judgment debtor holding more than 2 hectares of unirrigated land — He is not a marginal farmer — He is not entitled to benefit of relief under S 4 969 A

——Ss 4 2 (6) — Benefit of — Debtor as mentioned under S 4 alone is entitled to benefit — Small farmer specifically excluded from definition of debtor not entitled to benefit 969 B

—Uttar Pradesh Regulation of Money Lending Act (29 of 1976)

——S 6 — See 547

——S 26 (1) Proviso (As added by U P Act 1 of 1979 S 6) and S 28 — U P Regulation of Money Lending Rules (1976) R 19 — Condonation of delay in filing Form 10 — Reasons — Necessity 547

——S 28 — See 547

—Uttar Pradesh Regulation of Money Lending Rules (1976)

——R 19 — See 547

Deemed vacancy

——Notice before declaration — Wife of deceased tenant is entitled to notice — See 3 S A

De facto doctrine

——Applicability — See 1294

Defence and Internal Security of India Rules (1971)

——R 155 (1) and (2) — Public premises — Eviction of unauthorised persons from — Satisfaction of Authority that concerned person is in fact unauthorised occupant — Order when need no recite reasons for satisfaction 783 A

——R 155 (1) and (2) — Public premises — Eviction of unauthorised persons from — Order of District Judge in appeal in proceedings under Public Premises (Eviction of Unauthorised Occupants) Act that petitioner was a licensee and not an unauthorised occupant 783 B

Defence of India Act (51 of 1962)

——Ss 30 38 — U P Defence of India (Requisitioning and Acquisition of Immoveable Property) Rules (1963) Rr 9 10 — Requisition of land — Arbitrator can award solatium and interest on compensation — Solatium shall be added to compensation for calculation of interest 1203 A

——S 30 — Land acquisition — Compensation — Determination of — It is well established that sale consideration mentioned in a sale deed for smaller area cannot furnish guideline for determining compensation for larger area 1203 B

——S 30 — Land requisition — Compensation for trees by Arbitrator — Arbitrator awarding Rs 40/ only per tree as claimed by claimant — No claim made for usufruct — Arbitrator committed no error 1203 C

——S 30 — Land requisition — Compensation — Enhancement — Factors to be considered 1203 D

——S 38 — See 1203 A

Defence of India Rules (1962)

——R 133 V (1) — See 1291

Detention

——Ground for — See 916 A (FB)

Dispute as to possession of shop

——Possession of servant as against his master is no possession — See 836

District Boards Act (10 of 1922)

——S 174 (2) (k) — U P Kshetra Samitis & Zila Parishads Adhiniyam (33 of 1961) S 270 — Bye-laws framed by District Board for payment of licence fee by owner of flour mills with effect from 18 6-1952 under S 174

District Boards Act (contd)
(2) (k) — Bye laws fall outside ambit of S 174 (2) (k) — No other provision of District Boards Act to frame bye laws for charging licence fees in connection with running of flour mill brought on record — Bye-Laws invalid — Zila Parishad cannot enforce same by relying upon provision of S 270 of (1961) Adhiniyam 1033

Doctrine of blending
——See 1013 B

Doctrine of frustration
——Not applicable to self induced frustration 693 D

Double jeopardy
——Conviction under Municipality Act for not possessing licence — Prosecution for same offence under P F A Act — Not permissible — See 1319

Dowry Prohibition Act (28 of 1961)
——S 6 — See 1366

EDUCATION
——Ad hoc appointment — Services not legally terminated — Presumption — See 1025
——Admission to B Tech course — Weightage to sons of defence personnel — See 749
——Admission to LL B course — See 184
——Admission to post graduate course — Photostat copy of forged mark list — See 286
——Admission to post graduate studies — Cancellation of — See 135 A
——Appointment of lecturer — Teaching experience in other University — See 205
——Attendance — Condonation of shortage — See 1313 B
——Examination — Unfair means — See 869
——Order affecting salary of teacher — Natural justice — See 1138 B
——Post Graduate Medical Course — Admission in two colleges — Cancellation of one admission — See 428 A
——Recognised institution — Managing Committee — See 236 A
——Suspension of Management — Show cause notice — See 323
——Teacher — Fixation of salary — See 1138 A
——Termination of studentship of student — See 428 B
——University — Vice-chancellor — Power to pass resolution — See 14 5

—Agra University Act (8 of 1926)
——S 28A (2) — University Ordinances Chap 25 Ordn 12 (2) — University Examination — Candidates committing acts

Education — Agra University Act (contd.)
of indiscipline and misbehaviour towards invigilator after completion of all papers but before declaration of result — Examinations committee is competent to punish them by cancelling their examination 869 A

—Agra University Ordinances
——Chap 25 Ordn No 12 (2) — See 869 A

—Aligarh Muslim University Act (40 of 1920)
——S 19 (3) — Powers under — Can be exercised sparingly in consonance with Act and rules and not to by pass rules and regulations framed by superior body 1313 A

—Allahabad University Act (3 of 1921)
——S 37 — Allahabad University Rules for admission to LL B Course R 27 — Deduction of marks in cases of candidates graduating during earlier years — Proper mode 184

—Allahabad University Admission Rules (1984)
——R 1 — See 135 A C
——R 3 — See 135 A C
——R 22 — See 135 A

— Allahabad University Rules for Admission to LL B Course
——R 27 — See 184

—Banaras Hindu University Merit Promotion Scheme
——Para 2 (a) — See 1111 A B

—Gorakhpur University Act (20 of 1956)
——S 43 (4) — Regulation under M Sc (Part II) examination — Passing of — Candidate must pass both semester in the same academic year — Candidate appearing for examination not in same academic year on basis of admit card issued by principal — Principal not acting on behalf of University — University withholding result of petitioner and directing him to appear for both semesters — Principle of estoppel cannot be pleaded against University 958

—U P Intermediate Education Act (2 of 1921)
——Ss 16A 16CC and 16D — New scheme of Administration for an institution — Provision that Committee would cease to exist on expiry of certain term and authorising Deputy Director to appoint Administrator — Valid 88 A
——S 16A and scheme of administration framed thereunder — Scheme cannot be

Education — U P Intermediate Education Act (contd)

regarded as piece of subordinate legislation like Rules Regulations etc and hence writ petition would not lie merely for enforcing such scheme 270 A

——S 16A — See also 88 B

——S 16A (7) — Reference to Dy Director of Education — Existence of two rival management committees is a condition precedent 107

——S 16A (7) — Effective control over affairs of Institution — Parties setting up rival claims — Determination of by Dy Director Education — Plea that Registrar of Societies had cancelled registration of society which was set up by petitioners — Order of cancellation could be relied on 236 A

——S 16A (7) Explanation — Power to determine effective control — Deputy Director not to make elaborate inquiry into validity of election 236 B

——S 16CC — See 88 A

——S 16D — See 88 A

——Ss 16D (4) 16F — Authorised Controller validly appointed by Commitee of Management to remove defects and deficiencies — He has power to constitute selection committee to fill up vacancies for post of lecturers — High Court declaring his appointment illegal — Effect 1294

——S 16E — Person as lecturer not having requisite qualifications — Exemption granted — Exemption does not operate retrospectively 793 (SC)

——S 16F — See 1294

—Uttar Pradesh State Universities Act (President s Act 10 of 1973)

——S 13 (6) — Resolution D/ 6-3 1986 passed by Vice Chancellor — Entrance test prescribed by resolution for admission to Degree Course in Arts Commerce and Science — No urgency shown to justify action — Resolution is ultra vires the provisions of Act 1485 A

——S 28 — Notification D/ 15-12 82 under — Admission to post graduate Course in Medical Colleges in U P — Non-availability of eligible candidates from college in question to fill 75 per cent seats reserved for them — Vacancies should not be kept vacant — Must be filled up by candidates from other Medical Colleges 386

——S 28 — See 135 B

——S 28 (3) — Allahabad University Admission Rules (1984) Rr 1 3 and 22 — Admission to postgraduate studies — Re admission in subsequent session who discontinued in earlier Session — There is no vested right — Students can seek fresh admission — Petitioners wrongly readmitted — Cancellation of Admission is legal 135 A

——S 31 (11) (a) — See 1138 A

——S 45 (4) — Termination of studentship of student — Sub s (4) is not exhaustive of contingencies in this respect 428 B

——S 49 and S 31 (11) (a) (as substituted by U P Act 5 of 1977) and 60 A (as inserted by U P Act 21 of 1975) — Statute framed under Statute 11 04 — Petitioners appointed initially as temporary lecturer — Service continued without break till he was appointed by duly constituted Selection Committee — Temporary service as well as regular appointment approved by Vice Chancellor — In fixing salary of petitioner his temporary service also has to be counted — S 31 (11) (a) which was substituted subsequently was not applicable 1138 A

——S 50 (1) — Statutes under — First Statutes of University of Meerut (1977) Statute 11 13 (8) — Exemption under — Teaching experience in other University cannot be counted 205

——S 65 (2) — Member of Execution Council — Retains seat till successor is appointed 1383

——S 66 — Allahabad University Admission Rules (1984) Rr 1 and 3 — Admission to postgraduate studies — Readmission to students who discontinued in earlier session — Illegal — Subsequent cancellation of is legal — S 66 was relevant and did not cure illegality — Question of estoppel could not arise 135 C

Ejectment

——Sub letting — Plea of partnership — See 310 B

Election

——Powers of returning officer — See 1321

Election Petition

——Corrupt practice — Candidate not joined as co-respondent — See 1329

——Summary dismissal for failure to incorporate facts relating to corrupt practice — See 625 A (SC)

Electricity (Supply) Act (54 of 1948)

——Ss 48 and 49 — Supply of electric energy — Revision of rates unilaterally

Electricity (Supply) Act (contd)
— Rates fixed under agreement — Electricity supply commenced though agreement not executed — Revision of rates — Effect 1288 B
——S 49 — See 1288 B
——S 76 — See 1288 A

Enemy Property Act (34 of 1968)
——S 5 — See 1251

Entertainment
——See 96

Essential Commodities Act (10 of 1955)
——S 3 — Sugar and Gur Dealers Licensing Order (1962) — Order cancelling licence of petitioner — Appeal — Appellate authority finding petitioner guilty — Opportunity of hearing not afforded — Order is erroneous 820
——S 3 — See also 643

Eviction
——Compromise eviction decree — Executability — See 609 A
——Unconditional deposit of rent — Deposit with condition to pay after proof of title — See 372

Evidence Act (1 of 1872)
——Ss 3 and 5 — Interested witnesses — Evidence of — Rule regarding appreciation 1976 All WC 495 **Reversed** 175 A (SC)
——S 3 — Partisan witness — Evidence of — Partisan witnesses though inimically disposed towards accused can very well be relied upon for convicting appellants if it is carefully scrutinised 245 A
——S 3 — Criminal case — Appreciation of evidence — Eye-witness — Credibility — Witness close relative of deceased and inimical to accused — Presence of witness at time and place of occurrence doubtful — Held witness could not be relied upon 931 A
——S 3 — Evidence — Credibility of witness — Assertion of witness that deceased told him names of assailants but failure of witness to disclose same to Investigating Officer — Held witness was not reliable 931 B
——S 3 — Interested witness — Witness injured at the time of occurrence — No material infirmity pointed out in his evidence as to discredit his testimony — His evidence cannot be disbelieved merely because he was closely related to the deceased 1220 A
——S 3 — Evidence of illiterate or semi illiterate witnesses on question of age —

Evidence Act (contd)
Often very vague — It is unsafe to base finding on such evidence 1335 A
——S 3 — See also 245 C 300 B 780 1220 B 1246 C 1302 1346 C 1401 1500
175 A (SC)
——S 5 — See
——S 8 — Murder — Motive — Proof 1003 I
——Ss 17 31 — Admission — Admission of party is not conclusive proof of the matter admitted 157 A
——Ss 17 18 43 80 — Admissions made by accused in his previous examination in criminal proceedings — Relevant and admissible in civil proceedings under Ss 17 18 527 B
——S 18 — See 527 B 1346 C
——S 31 — See 157 A
——S 32 — Dying declaration — Value 267
——S 32 — Dying declaration — Evidentiary value of — Deceased having no opportunity to identify his assailants — Declaration cannot be relied upon in absence of corroboration to convict accused 931 C
——S 35 — See 1194
——S 36 — Statements in maps charts plans — Map prepared by Education Department of State Government — Admissible in evidence as relevant — Statements therein can be contradicted 1425
——Ss 40 to 43 — Relevancy of judgments 527 A
——S 41 — See 527 A
——S 42 — See 527 A
——S 43 — See 527 A B
——S 45 — See 931 B
——Ss 50 and 60 — Relationship — Opinion expressed by conduct 463 A
——S 50 — U P Consolidation of Holdings Act (5 of 1954) S 48 — Revision — Finding of trial Court — When to prevail 1335 A
——S 50 — Opinion on relationship — Relevancy — Statements of witnesses having special means of knowledge as member of family or otherwise would be relevant 1335 B
——S 57 — Judicial notice — Court can take judicial notice of enormous manifold increase of rents throughout the country particularly in urban area 1168 B (SC)
——S 60 — See 463 A
——S 62 — Document admitted in evidence without any objection — Objection as to his admissibility could not be raised at a later stage in appeal 468 D

Evidence Act (contd.)
——S 62 — See also 488 C
——S 68 — See 1493 B
——S 77 — Consolidation proceedings — Certified copy of Power of Attorney — Original filed in another case — Certified copy sufficient — Person holding Power of Attorney entitled to file objection 1276 B
——S 77 — See also 1276 C
——S 80 — See 527 B
——S 95 — See 785 A
——Ss 101 104 — See 1264 B
——Ss 107 108 — Presumption about death — When to be raised — Burden of proof 1276 D
——S 103 — See 1276 D
——S 114 — Notice of demand and ejectment sent on behalf of landlord received back with the remark refused — It would be deemed that tenant knew about contents of notice 444 B
——S 114 — See also 965 B 1047 C 1248 A 1446 B
——S 114 (e) — See 351 A
——S 114 Illus (f) — See 342 D
——S 114 Illus (g) — See 981 A
——S 115 — Estoppel — Suit for eviction and arrears of rent — Order striking off defence of tenant — Writ against — Rejected in limine — It would not act as estoppel 1395 B
——S 115 — See also 135 C 554 B 953 1232 B 1302
——S 134 — See 162 (SC)

Explosives Rules (1983)
——R 113 — See 873 A
——R 114 — See 873 A
——R 114 (C) — Expression personal use — Ambit of — Use of explosives for blasting in stone quarries — It is Commercial use and could not fall under expression personal use 873 B

Fatal Accidents Act (13 of 1855)
——S 1 A — See 1422

Firearms
——Licence to manufacture — See 336 A

Forest
——Declaration of land held under patta from Gaon Sabha as reserved forest — See 196 A

Forest Act (16 of 1927)
——S 6 — U P Zamindari Abolition and Land Reforms Act (1 of 1951) S 195 and S 117 (1) and (6) — Declaration of land as reserved forest — Land held under patta from Gaon Sabha — Cannot be declared as reserved forest on resumption 196 A

Forest Act (contd.)

Freedom of religion
——Removal of grave — See 1368 (SC)

Gaon Sabha and Bhumi Prabandhak Samiti Manual
——Para 128 — See 293 A
——Para 131 — See 293 A

General Clauses Act (10 of 1897)
——S 3 (8) — See 397 B (SC)
——S 6 — See 233 710 A 662 A B (SC) 845 (FB)
——S 10 — Applicability — Eviction proceeding — Deposit of rent — S 10 cannot apply to cancellation of a date fixed for hearing 942 C
——S 27 — Notice under S 106 T P Act (4 of 1882) — Service of — Presumption — Suit for ejectment and arrears of rent — Postal receipt under which notice under S 106 for termination of tenancy registered not containing full address of tenant — No evidence to show that registered letter containing notice was fully addressed — Held presumption of service of notice cannot be drawn under S 27 1047 A
——S 27 — Evidence Act (1 of 1872) Section 114 — Provincial Small Cause Courts Act (9 of 1887) S 25 — Suit for ejectment and arrears of rent — Registered notice under S 106 for termination of tenancy not containing full address of tenant — Subsequent notice allegedly sent under certificate of posting and containing full address — Presumption 1047 C

Gorakhpur University Act (20 of 1956)
See under Education

Government Grants Act (15 of 1895)
——S 3 — Grant of plot in 1907 under the Crowns Grant Act in lieu of services rendered — Rent free grant — Hereditable and transferable — Now cannot be treated as unauthorised occupant — Nature of grant not alterable — No right of resumption of grant in the Settlement Area or its successor later on 1716

Guardians and Wards Act (8 of 1890)
——S 17 — See 1353 B
——S 25 — See 1353 A
——Ss 29 47 (e) 48 — Order granting permission to mother who was appointed guardian to transfer land on minor's ... — No fraud attributable to vendee in obtain

Guardians and Wards Act (contd)
ing premission — Order cannot be chal
lenged after expiry of three years on com
mencement of consolidation proceedings 351 A
——S 47 (e) —See 351 A
——S 48 — See 351 A

Hastinapur Town Development Board Act (14 of 1955)
——S 1 (3) — See 1406 A
——Ss 14 1 (3) — U P General Clauses Act (1 of 1904) S 6 — Liability to pay house tax 1406 A

HIGH COURT RULES AND ORDERS

—Allahabad High Court Rules (1952)
——Chap 5 R 1 — See **1376 (FB)**
——Part I Chapter v R 2 Proviso (a) — Appeal against acquittal — Direction under the proviso not ultra vires of Sec tions 368 and 369 Cr P C 41
——Chap v R 10 (1) — See 816

Hindu Law

——Joint family — Partition suit — Order dismissing final decree proceedings for non-appearance of plaintiff decree holder — Order is without jurisdiction 994
——Joint family — Blending of self acquired property with joint property — Intention to waive separate rights must be established 1013 B
——Joint family property — Property acquired by Karta — No nucleus available to Karta from ancestral property — On facts held it was not joint family property 1013 A
——Partition — Intention to separate — See 1342
——Partition — Joint family property — Ancestral property 1146 A
——Suit for partition — Liability of Karta of Hindu family to render accounts 1124 C
——Will — See 1146 B
——Will — Construction of 1146 C

Hindu Minority and Guardianship Act (32 of 1956)
——Ss 4 6 — Constitution of India Arti cle 226 — Mother of child filing writ peti tion claiming his custody — Power of High Court to grant custody of child to mother more so in writ jurisdiction 742
——S 6 — See 742

Hindu Succession Act (30 of 1956)
——S 14 — Applicability — Gift of entire property to widow — Only life estate given — Transfer therefrom of one piece of land by widow — No proof that it was given to her in lieu of maintenance — Sub s (2) of S 14 would apply 146
——S 15 — See 943 B
——S 30 — Testamentary Succession — Coparcener s right to dispose of his share in joint family property — Co parcener would be competent to dispose to extent of his share alone in Mitakshara joint pro perty by will — Will in respect of rest of petty would be void 1146 B

HOUSES AND RENTS

——Arrears of rent — Failure to deposit it in time — Effect — See 288 B
——Arrears of rent — Unconditional de posit of at first hearing — See **393 (SC)**
——Bona fide need — Comparative hard ship — See **740 (SC)**
——Building destroyed wholly — Tenants cannot reconstruct their portions of ten ancy — See 109
——Eviction — Bona fide need — Com parative hardship — See 778 A
——Eviction — Offer of alternative suit able accommodation by landlord — See **740 (SC**
——Eviction — Personal need — Alterna tive accommodation — See 778 B
——Eviction Suit — Res judicata — See 240
——Notice to quit — Presumption of ser vice — See 1047 A
——Notice to quit procedure — See 1047 C
——Pendency of eviction — Application — Subsequent events — See 1415 C
——Permission for demolition and recon struction of building — Non filing of esti mate of cost of work — Effect — See 884

—Central Provinces and Berar Letting of Houses and Rents Control Order (1949)
——Cl 13 — See **1027 A (SC)**
——Cls 22 13 and 23 — Lease of non-residential building in contravention of Cl 22 — Landlord seeking permission to terminate tenancy — Landlord cannot urge that lease was void **1027 A (SC)**
——Chap III Cl 22 — Notification dated 24 10 1968 exemption from operation of Chap III house used for non residential

Houses & Rents — Central Provinces & Berar Letting of Houses and Rents Control Order (contd)

purpose — Notification is prospective only 1027 B (SC)

——Cl 23 — See 1027 A (SC)

—Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960)

——S 30 (ii) — Classification in S 30 (ii) of tenants of residential buildings fetching rent of over Rs 400/- per month for depriving them of benefits of Act — It is without any basis — S 30 (ii) is violative of Art 14 of Constitution 1158 A (SC)

—Uttar Pradesh (Temporary) Accommodation Requisition Act (25 of 1947)

——S 3 — Requisition of property — Effect 448 B

—U P (Temporary) Control of Rent and Eviction Act (3 of 1947)

——S 3 — Civil P C (5 of 1908) Section 47 O 21 R 1 — Compromise eviction decree — It is executable if statutory grounds for eviction pleaded by landlord have been admitted by tenant in compromise 609 A

——S 3 — See also 609 B

——S 3 (1) (c) — See 708

——S 7-B — See 76

——S 7-C — Application by tenant seeking permission to deposit rent in Court — Munsif cannot issue notice to landlord under S 7-C (4) 764 A (SC)

——S 7 C — Eviction of tenant for default — Tenant depositing rent in Court — Tenant must prove before Court the factum of refusal by landlord when he sought to make payment 764 B (SC)

——S 7-C (1) (2) (6) — Deposit of rent under — Notice of demand — Tenant depositing rent under S 7-C (2) instead of paying it to landlord — There is no payment to landlord within postulates of Section 7-C (6) 444 A

—Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972)

——S 1 (3) — See 1056

——S 2 (2) Expl 1 (a) — Building though not ten years old on date of suit completing ten years during pendency of litigation — Provisions of Act are attracted 689

——Ss 2 (2) 39 40 — Expression Date of commencement of the Act used in Ss 39/40 — Interpretation of — It means date on which provisions of Act became

Houses & Rents — Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act (contd)

applicable to building in respect of which suit for ejectment was pending — Definition of word commencement in S 4 (10) of U P General Clauses Act cannot be applied for interpreting the word with reference to Ss 39/40 705 A

——Ss 3 (a) 18 — Application for release of accommodation — Claim by objector that he was heir of tenant — Application allowed — Revision against — No finding by authority regarding question whether objector was heir or not — Case remanded for decision on question 943 B

——S 3 (k) — See 745 A

——S 9 — See 745 A

——S 12 — See 84 A (SC)

——S 12 — See 535 A

——S 12 (1) (b) — Deemed vacancy — What is not 1979 All Rent Cases 397 Reversed 84 B (SC)

——S 12 (1) (b) — See also 233

——S 13 — See 823 A

——Ss 16 21 — Release of premises — Applicability of Ss 16 and 21 433

——S 16 — Application for release of premises by landlord — Persons claiming allotment of premises cannot participate or file objections to application 436

——S 16 — Notifying deemed tenancy of building — Declaration made without giving notice — Declaration is illegal 535 B

——S 16 — Authority competent to decide release application — Determination 823 B

——S 16 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Rules (1972) R 13 — Application for release of vacant building — Right to file objection against — Prospective allottee has no such right even after deletion of original R 13 (4) 1980 UPLT NOC 22 and 1980 All Rent Cas 548 Overruled 845 (FB)

——S 16 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Rules 1972 R 10 (4) — Application for allotment of premises for tenancy — Not rejected but some action being taken thereon within one year — Renewal of under R 10 (4) need not be sought 910 A

——Ss 16 and 17 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Rules (1972) R 9 (3) — Allotment of part of house by authority — Landlord occupying part of house — Notice not

given to landlord of allotment — Landlords right to nominate tenant of his choice under S 17 (2) is violated — Order is illegal 1509 A (SC)

——S 16 — Scope — Rent control authority not competent to declare as to who is tenant in possession of premises 1519 B

——S 16 — See also 84 A (SC) 813 823 A 943 A

——Ss 16 (1) and 12 and 41 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Rules (1972) R 8 — Notifying deemed vacancy — Member of tenant's family is entitled to notice and hearing 535 A

——S 16 (5) — U P Urban Buildings (Regulation of Letting Rent and Eviction) Rules 1972 Rr 8 (2) and 28 — Allotment order made without notice to the landlord would be invalid — Service by affixture done without a finding of non-availability of other modes under Clauses (a) to (c) of R 28 (1) was improper 910 B

——Ss 16 (5) and 17 (2) — Review of order of allotment by authority — Order of allotment illegal for non-compliance of mandatory provision of S 17 (2) — Review of order by authority is legal — Even if there was procedural defect in entertaining review application it could not be interfered with by S C as High Court has upheld the order 1509 B (SC)

——S 17 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Rules (1972) R 10 — Application for allotment of accommodation by petitioner — Nomination by landlord by endorsement on it — Form of 763

——S 17 — See also 1509 A (SC)

——S 17 (2) — See 1509 B (SC)

——Ss 18 13 16 — Allotment order in favour of unauthorised occupant — Cancellation — Release in favour of landlord owner — Revision by allottee against order not maintainable 823 A

——S 18 — See also 943 B

——S 18 (1) — Revising authority can pass orders cancelling previous allotment — Cannot pass order of allotment in favour of particular person 978

——S 20 — Eviction proceedings — Dispute as to rate of rent — Expert's opinion on relevant documents — Findings as to Legality 981 B

——S 20 — Provision is prospective — Suit pending on date of commencement of the Act — Cannot be dismissed on ground of bar under S 20 1426 B

——S 20 — See also 283 A 981 A, 1426 A

——S 20 (1) — Transfer of Property Act (4 of 1882) S 106 — Composite notice determining tenancy — Legality 970 B

——Ss 20 (2) 39 — Scope and applicability — Suit for eviction filed prior to enforcement of Act merely because landlord does not desire to continue tenant as tenant — It cannot be decreed after provisions of Act become applicable 790

——Ss 20 (2) (a) (4) and 30 (2) (6) — Eviction — Defaulter in payment of rent — Tenant depositing entire amount after adjusting deposit made under S 30 (2) on first date of hearing — He is absolved of liability to eviction 1305 B

——Ss 20 (2) (a) 20 (4) — Eviction — Tenant depositing rent when notice was given by landlord — Evidence to show that tenant was not in arrears of rent for not less than four months — Tenant also depositing rent within the meaning of Order 15 Rule 5 — Tenant cannot be said to be defaulter within the meaning of Section 20 (2) (a) 1428 A

——Ss 20 (2) (e) Explanation and 12 (1) (b) — Suit for eviction under — Sub-letting prior to commencement of Act with respect to building not covered by old Rent Control Act — Suit liable to be dismissed 233

——S 20 (2) (e) — Eviction of tenant for subletting — Expression has sublet includes subletting prior to enforcement of 1972 Act — Hence decree for eviction can be passed against tenant for subletting premises under old Act 310 A

——S 20 (2) (e) — Eviction of tenant on ground of subletting — Sub-tenant alleging that he has entered into partnership with tenant — Permission or knowledge of landlady for partnership not proved — Held that possession of sub tenant was illegal 310 B

——Ss 20 (2) (e) and 34 — Suit for ejectment — Default in payment of rent for more than four months — Order of trial Court decreeing suit in favour of landlady — Interference in revision without

Houses & Rents — Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act (contd.)

setting aside finding of trial Court regarding default is illegal 310 C

——S 20 (4) — Eviction — Arrears of rent — When does not become conditional 393 (SC)

——S 20 (4) — Unconditional deposit of rent — What is not 572

——S 20 (4) — Object — Provision having been enacted for benefit of tenant it should be construed liberally in his favour 942 B

——S 20 (4) — Civil P C (5 of 1908) Order 15 Rule 5 (U P) — Benefit of Section 20 (4) — Tenant has to deposit entire amount due and not amount admitted by him to be due 981 C

——Ss 20 (4) 30 — Suit for eviction on ground of arrears of rent — Tenant cannot claim deduction of invalid deposits made under S 30 for taking advantage of Section 20 (4) 1051

——S 20 (4) — See also 1428 A

——S 20 (4) Explanation (as added by amendment Act (U P Act 28 of 1976) — Applicability — Benefit under S 20 (4) — Failure of tenant to deposit arrears of rent on date mentioned in summons — Tenant is not entitled to benefit under S 20 (4) — Explanation — Coming into force after filing of suit — Immaterial 288 B

——S 20 (4) Explanation (as amended by U P Act No 28 of 1976) — Suit for ejectment and arrears of rent — First date of hearing — What is 423

——S 20 (4) Expl (1) — Benefit under — Grant of — Cancellation of a date fixed for hearing — Duty of Court stated 942 A

——Ss 20 (4) Proviso and 1 (3) — Notification No 7352/29 E 55-73 D/ 30-4-1973 — Ejectment suit — Construction of house by tenant's wife in area within 3 kilometers of limits of Municipality in question — Proviso to S 20 (4) applies — Tenant not entitled to benefit of S 20 (4) 1036

——S 21 — Lease — It is transferable and heritable right — Lease month to month immaterial 62 A

——Ss 21 3 (k) 9 — Suit for ejectment on ground of default in payment of rent —Assessment of building made — Tenant liable to pay assessed letting value of building as rent — Failure to pay made him defaulter 945 A

Houses and Rents — Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act (contd.)

——S 21 — Eviction — Bona fide need —Comparative hardship to tenant — Held, on facts mere fact that hardship will be caused to tenant no ground to discard the bona fide need of landlord 773 A

——S 21 — Eviction on ground of personal need — Alternative accommodation — Mere non availability of to tenant by itself no ground to reject application of landlord 773 B

——Ss 21 and 23 — Release of premises under S 21 — Re-entering into possession by tenant — Application under S 23 is maintainable 1069

——S 21 — Eviction of tenant — Application for — Pendency — Subsequent events — Require to be taken into consideration 1415 C

——S 21 — Comparative hardships — Tenant a businessman paying income-tax — Not by itself sufficient to infer that he can occupy any other accommodation — Other relevant material to be taken into consideration 1415 D

——S 21 — See also 62 D 74 432 783 1415 A

——S 21 (1) — Application for release — Grounds — Impending marriage of son can be valid ground 125 B

——S 21 (1) — Application for release under — Finding of Court on question of suitable alternate accommodation and hardship erroneous and perverse — Order liable to be quashed 438

——S 21 (1) Expln Cl (iv) — Petition for eviction on ground of bona fide need of landlord — Case covered by S 21 (1) Expln Cl (iv) viz landlord residing in portion of building the remaining part of which is in occupation of tenant — Prescribed authority cannot decide a plea that need of landlady would be served by releasing only part of building under tenancy 1043 B

——S 21 (1) (a) — Release of accommodation — Size of rooms in occupation of landlord — Relevant consideration 125 C

——S 21 (1) (a) — Suit for ejectment — Bona fide need — Need for accommodating daughter and son-in-law pursuant to promise made at time of marriage — Is not bona fide need 347

——S 21 (1) (a) — Eviction — Bona fide need — Comparative hardship — Finding CMWP No 11377 of 1980 D/- 1-5-1985 (All), Reversed 740 (SC)

Houses & Rents — Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act (contd)

——S 21 (1) (a) — See 973

——S 21 (1) (a) Explanation (i) — Objection to application for release — Member of family of tenant acquiring house as a tenant — Explanation (i) is attracted and tenant's objection is not maintainable 796 C

——S 21 (1) (a) and (b) — Dilapidated premises required by landlord for demolition and reconstruction etc — Case is covered by Cl (b) — It cannot be thrown out as barred by first proviso to S 21 (1) 1135

——S 21 (1) (a) Proviso — Eviction — Purchase of premises — Order of eviction passed before expiry of period of three years from date of purchase is invalid in view of the proviso 946

——S 21 (1) (a) and Proviso 3 — Release of accommodation — Application for — Landlord earlier converting part of building for business purpose — No bar to maintainability of application 125 A

——S 21 (1) (a) Proviso 3 sub cl (ii) — Release of premises — Bar under Cl (ii) 451

——Ss 21 (1) (a) Explanation C) (1) Fourth Proviso and (3) Explanation (as inserted by Amending Act 28 of 1976) — Release of accommodation — Tenant's widowed daughter residing with him building residential building in same city — Tenant could not object to landlord's application for release 75a

——S 21 (1) (b) — U P Urban Buildings (Regulation of Letting Rent and Eviction) Rules (1972) R 17 (1) (ii) — Application under S 21 (1) (b) for demolition and reconstruction of premises in dilapidated condition — Estimate prepared under R 17 (1) (ii) — Omission to include cost of demolition does not infringe requirement of R 17 (1) (ii) except technically 884

——S 21 (8) — Provision restraining landlords from seeking release of buildings held under tenancy of State Government or other specified authorities — Is neither violative of Art 14 Constitution nor does it impair human dignity 972

——S 22 — See 74 973

——S 23 — See 973 1089

——S 23 (2) — Building destroyed wholly — Tenants cannot be permitted to reconstruct their portions of tenancy 409

——Ss 30 — See 1051

Houses & Rents — Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act (contd)

——S 30 (1) — See 306 A

——S 30 (2) (6) — See 1305 B

——S 33 — Civil P C (5 of 1908) S 11 — Res judicata — Application under Section 33 (1) of Act on grounds that petitioner was unauthorised occupant of premises in dispute — Finding recorded that petitioner was tenant of premises — Finding operates as res judicata in subsequent suit for declaration and eviction of petitioner 240

——S 34 — Appellate authority — Powers of 204

——S 34 — See also 310 C

——S 34 (1) (g) — See 973

——S 39 — Building became ten years old during pendency of revision — Tenant is entitled to avail of benefit of S 39 116 A

——Ss 39 40 — Tenant claiming benefit under — Application filed 8 years after coming into force of the Act — Delay cannot be condoned by invoking S 5 of Limitation Act 650

——Ss 39 20 — Deposits as contemplated by S 39 include costs of the suit — Deposit with costs of the suit not made — Benefit of S 39 cannot be given 1426 A

——S 39 — See also 705 A 790

——S 40 — See 705 A 650

——S 41 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Rules (1972) R 8 (2) — R 8 (2) is mandatory 62 C

——Ss 41 34 (1) (g) 21 (1) (a) 22 23 — U P Urban Buildings (Regulation of Letting Rent & Eviction) Rules (1972) R 22 (f) — Ex parte eviction order enforced — Ex parte order set aside — Restitution under R 22 (f) under inherent powers — R 22 (f) not ultra vires S 41 — Restitution order not invalid 973

——S 41 — See also 535 A

—Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Rules (1972)

——R 8 — See 535 A

——R 8 (2) — Allotment order — Validity 891 A

——R 8 (2) — See also 62 C

——R 8 (2) — See 910 B

——R 9 (3) — See 1599 A (SC)

——R 10 — See 763

——R 10 (4) — See 910 A

——R 11 (1) (4) (as substituted by U P Urban Buildings (Second Amendment) Rules

Houses & Rents — U P Urban Buildings (Regulation of Letting Rent and Eviction) Rules (contd)
(1977) w e f 25 5 77) — Allotment of building out of turn to any person — Procedure 891 B
——R 13 — See 845 (FB)
——R 16 (1) (d) — Applicability of — Disputed property very small — Part of it not sufficient to meet requirement of landlord or tenant — R 16 (1) (d) is not applicable 796 A
——R 16 (1) (d) — Applicability of — Remand of case when not necessary 796 B
——R 16 (1) (d) — See 1043 B
——R 16 (1) (f) — See 740 (SC)
——R 16 (2) (d) — Applicability — Conditions precedent — Bona fide need of landlord's heir — Consideration — Two conditions prescribed in R 16 (2) (d) must be primarily satisfied 1415 A
——R 16 (2) (d) — Words technical education — Does not include medical education — Landlord's heir wanting to pursue medical profession — R 16 (2) (d) cannot be invoked for eviction of tenant 1415 B
——R 17 (1) (n) — See 884
——R 22 (f) — See 973
——R 28 — See 910 B

Inquiry
——Opportunity of hearing — See 820

Interpretation of Statutes
——Beneficial statutes — Necessity to enforce — See 1369 G (SC)
——Deeming provisions — See 916 A (FB)
——Deficiencies in statute — Court cannot add or amend or by construction make good those deficiencies 399 D
——Implied repeal — See 662 B (SC)
——Prospective and retrospective operation of Statute — See 233
——Repeal and re enactment of Act — See 845 (FB)
——Repeal and saving — See 271 (SC)
——Social legislation — Interpretation beneficial to person for whose benefit the statute has been brought on book must be adopted 1428 B

Issue estoppel
——Plea of — See 1302

Judicial notice
——Enormous manifold increase of rents throughout country — See 1168 B (SC)

Judicial Officers Protection Act (18 of 1850)
——S 1 — U P Panchayat Raj Act (26 of 1947) S 49 — Protection under — Genuineness of record sent by Sarpanch to Court of Magistrate challenged — Held on facts that Sarpanch was not entitled to claim protection under S 49 1258 B

Judiciary
——Institute or Academy for training judicial officers — See 1369 H (SC)

Juvenile Courts
——Necessity — See 1369 E (SC)

Land Acquisition
——Solatium — Temporary occupation of land — See 1067 (SC)

Land Acquisition Act (1 of 1894)
——S 4 — Compulsory acquisition of land under — Determination of compensation — Same cannot be determined on basis of valuation determined for purposes of stamp duty 1022 A
——Ss 4 (1) 55 — Acquisition — Personal notice to each and every interested person need not be served Civil Second Appeal No 45 of 1963 D/- 8 7 1970 (Guj) Reversed (1969) 10 Guj LR 303 Overruled 659 (SC)
——Ss 9 18 25 (3) — Acquisition of land — Compensation — Claimant not making specific claims with regard to trees crops standing on land acquired nor revising her claim u/s 9 — Claimant putting forward her claim in application u/s 18 — Effect 1244 B
——S 9 — Acquisition of land — Compensation — Occupancy tenant is entitled to compensation 1244 D
——Ss 17 (3) 25 (2) (3) — Land acquisition — Compensation — Assessment of — Officers and Court should take a liberal view — They should not adhere to technicalities with a view to deprive interested persons of compensation due to them in law 1244 A
——Ss 18 54 23 (2) — Solatium — Section 23 (2) stood deleted when award was pronounced — S 23 (2) stood revived afterwards — Appeal decided thereafter — Solatium could not be denied 71 C
——Ss 18 and 53 — Reference made to Court under S 18 — Amendment of was possible — S 53 applied 1103
——S 18 — See also 1244 B
——S 23 — U P Zamindari Abolition and Land Reforms Act (1 of 1951) Ss 19 133 (1) 134 — Acquisition of land — Land held Sirdar — It has market value 71 A
——S 23 — Acquisition — Valuation — Land covered under exemplar — Similar to land under acquisition — Sale deed relating to that land could not be ignored 71 B

Land Acquisition Act (contd)

——S 23 — See also 1122

——Ss 23 (2) 28 (as amended in 1984) — Court fees Act (7 of 1870) S 8 — Compensation determined — Application for enhancement of solatium and interest in view of amendment — No Court fee is payable on application 887 A

——Ss 23 (2) 28 (as amended in 1984) — Civil P C (5 of 1908) S 151 — Enhancement of solatium and interest as per amended provisions — Application for under Section 151 Civil P C is maintainable 887 B

——Ss 23 (2) 28 (as amended by Land Acquisition (Amendment) Act (1984)) and 30(2) — Solatium — Determination of — Acquisition of land in 1974 — Tribunal awarding solatium at rate of 15% and interest at rate of 6% — Validity 1244 C

——S 23 (2) — See also 71 C 1067 (SC) 1155 1203 A

——S 25 (2) (3) — See 1244 A

——S 25 (3) — See 1244 B

——S 28 — See 887 A B 1155 1244 C

——S 30 (2) — See 71 D

——Ss 35 23 (2) — Solatium — Temporary occupation of land — Solatium is not payable 1067 (SC)

——S 53 — See 1103

——Ss 54 23 — Appeal by State against enhancement of compensation — Interference 1122

——S 54 — See also 71 C

——S 55 — U P Revenue Manual (Vol 1) Para 482 — Determination of market value of trees standing on land acquired — Notification No 11091-291/IOL AA 855/A-72 D/- Oct 4 1973 is instruction for determining compensation regarding such trees — It is neither unconstitutional nor invalid — Tribunal not calculating compensation regarding trees paying due regard to instructions — Is said to have acted illegally 1022 B

——S 55 — See also 659 (SC)

Land Acquisition (Amendment) Act (68 of 1984)

——S 23 (2) 30 (2) — Solatium — Award both by Special Land Acquisition Officer and District Judge on reference given before date of Bill — Appeal pending when amendment Act came into force — Solatium awarded at 15% 71 D

Lease

——Implied surrender — What is — See 1261

——Mining lease — Duration of — See 392 (SC)

Legal aid

——Right of accused — See 774 (SC)

Limitation Act (36 of 1963)

——Pre — See 526 (SC), 558 C

——Ss 2 (h) and 3 and S 13 — Application to sue as pauper — Finding of trial Court that suit was within time — Mere dismissal of application to sue as pauper does not establish that plaintiff had not acted in good faith 856 A

——S 3 — See 856 A

——S 5 — Civil P C (5 of 1908) O 22 Rr 3 and 9 — Setting aside of abatement — Applications for setting aside order of abatement and substitution of names filed after lapse of eight years — Existence of sufficient cause 354

——S 5 — Civil P C (5 of 1908) O 22 R 9 — Ten days delay in filing application for setting aside abatement — Delay due to negligence of clerk of counsel — Held delay satisfactorily explained and deserved to be condoned 1102

——S 5 — Condonation of delay — Property entered in name of donor — Donee filing objection during lifetime of donor under S 9A of Consolidation of Holdings Act for entering her name and obtaining ex parte order in her favour — Maintainability — Condonation of delay 1270 B

——S 5 — See also 650 1157 A

——S 10 — Trustee — Who is 31 F

——S 13 — See 856 A

——S 21 (1) — Applicability 31 E

——S 29 (2) — See 1157 A

——Art 4 — Agent — Who is 31 C

——Arts 4 and 113 — Suit for money defalcated by treasurer of University — Limitation held started from when Vice Chancellor knew it 31 D

——Art 64 — Adverse possession — Claim of — Possession must be adverse to knowledge of real owner 369 A

——Art 64 — Adverse possession — Carrying on stall of timber and drying of groundnuts on other's land and mortgaging it to Govt deptt without knowledge of true owner for purpose of taking loan — Do not constitute adverse possession 369 B

——Arts 64 and 65 — Possession of co tenants — Possession of one co tenant is possession of all 463 B

——Arts 64 65 — Adverse possession — Possession of co-sharer is not adverse possession 841 B

——Art 64 — See also 369 E 1061 (SC)

——Art 65 — See 463 B 1061 (SC)

——Art 68 — Expression Specific movable property — Does not cover amount of money (1883) ILR 5 All 341, (1907) ILR

Limitation Act (contd)
29 All 579 AIP 1930 All 597 and AIR 1930 All 573 Not followed in view of AIP 1938 SC 927 31 E
——Art 113 — See 31 D
——Art 119 — See 799 1365
——Arts 125 126 — Civil P C (5 of 1908) O 21 R 35 — Decree for delivery of immoveable property in possession of trespasser and for mandatory injunction — Execution of — Limitation 582
——Art 136 — See also 582

Maxim

—— Ambigutas verborum Latens verificatione suppletur Nam Quod Ex Facto Oritur Ambiguum verificatione Facti Tollitu — Meaning of — See 785 A
——Actus Curiae Neminem Gravabit — See 455 C
——Andi Alterom Partem — See 455 C

M D Course

——Admission to — See 386

Mines and Minerals (Regulation and Development) Act (67 of 1957)

——Ss 4 and 30 — Mining lease — Duration of — Civil Misc Writ Petn No 6876 of 1984 D/ 15 7 1985 (All) **Reversed 392 (SC)**
——S 15 (3) — See 728 A B C D
——S 16 — U P Minor Minerals (Concession) Rules (1963) Rr 3 52 53 — Mining licence — Grant of 873 A
——Ss 21 (5) and 15 (3) — U P Minor Minerals (Concession) Rules 1963 R 21 — Manufacture of bricks — Liability to pay royalty — Kiln owners are liable even though they did not obtain permit or lease from Government to manufacture bricks 728 A
——Ss 21 (5) and 15 (3) Proviso (as amended in 1970) — U P Minor Minerals (Concession) Rules 1963 R 21 — Enhancement of rate of royalty for using mud in manufacturing bricks — No limitation to enhance in any period of time — Validity of R 21 — Held on facts that to bring Rule in conformity with S 15 (3) Proviso four years could be substituted for two years 728 B
——Ss 21 (5) and 15 (3) — U P Minor Minerals (Concession) Rules 1963 Rule 21 — Manufacture of bricks — Fixation of amount of royalty — Pits mouth value — Consideration 728 C
——Ss 21 (5) and 15 (3) — U P Minor Minerals (Concession) Rules 1963 R 54 (1) — Manufacture of bricks — Payment of royalty — Demand for royalty in advance

Mines & Minerals (Regulation and Development) Act (contd)
under Rule 54 (1) — It is valid 728 D
——S 30 — See **392 (SC)**

Motor Vehicles Act (4 of 1939)

——S 2 (g) — Stage carriage — Private vehicle carrying more than six passengers for hire or reward — It is a stage carriage 315 A
——S 2 (28A) (as amended in 1969) — Expression route — Nationalisation of route A B — C D following some where between pts A B — Person plying on the common sector is to be held to ply stage carriage permit on the two points even if he does not pick up or set down passengers between those two points **215 B (SC)**
——S 2 (28A) — See also **215 A (SC)**
——S 47 — See 895 A B
——Ss 47 (3) 62 (2) (as amended by Act No 56 of 1969) — Temporary permits — Grant of during pendency of applications for permanent permit — R T A has jurisdiction to grant temporary permits if any of two conditions specified in sub-s (2) of S 62 exists 314
——S 48 — See 895 A
——S 48 (3) (xi) — Notice of one month — Necessity of — Condition that vehicle must not be more than ten years old subsequently attached to permit — Six months granted to replace old vehicle — One month s notice held hyper-technical 1316 B
——S 51 (2) (viii) and (x) — Stage carriage vehicles plying in hill areas — Condition that vehicle should not be more than ten years old — Held valid — Imposition of such condition after issue of permit is not bad 1316 A
——S 57 — See 895 B
——S 57 (8) — New route — Addition of — Its life is conterminus with life of permit itself 201 B
——Ss 58 60 (3) — Renewal of Permit — Power of transport authority 106
——S 58 — Renewal of permit — During proceedings therefor a fresh route cannot be included in permit 201 A
——S 60 (3) — See 106
——S 62 (2) (As amended by Act No 56 of 1969) — See 314
——Ss 64 (1) (f) 47 57 — Petitioner existing operator on route opposing order granting permit on route after increasing number of vehicles by way of revision — Competent and legal 895 B

Motor Vehicles Act (contd)

——S 64A — Revisional authority — Powers of — It can dismiss a revision either in default of appearance or default of prosecution 324 A

——S 64A —Revision under — Dismissal of — Restoration application — Hearing of — Adjournment application of Counsel on ground of personal illness — Adjournment to be granted 324B

——Ss 68C 68D (3) 68FF and 2 (28A) — Nationalisation of route — Scheme totally prohibiting private operators from plying stage carriages on route — Private operator cannot ply on part of route even with corridor restrictions (1985) 1 SCR 403 **Overruled** 215 A (SC)

——Ss 68C 68D 68F (1D) Proviso — Draft scheme — Period for its approval cannot be longer than 3 to 5 years — Draft scheme pending approval for 25 years — Scheme quashed 673 (SC)

——S 68D — See 673 (SC)

——S 68D (5) — See 215 A (SC)

——Ss 68F (1A) (1C) 48 47 — Grant of temporary permit either to Corporation or to private operators — Satisfaction of relevant authority that there is need for increase in number of stage carriages is condition precedent 895 A

——S 68F (1D) Proviso — See 673 (SC)

——S 68FF — See 215 A (SC)

——S 92A — See 1422

——S 95 — Truck which dashed against rickshaw killing one person driven by conductor and not licensed drivers — Insurer held not liable to pay compensation 1108 A

——S 95 — See also 1422

——Ss 110A 92A 95 110AA — Motor accident — Death of driver — Wrongful act negligence or default not attributed to owner — Claim not maintainable under S 110A — Proper forum would be under Workmen's Compensation Act 1422

——S 110AA — See 1422

——S 110B — Vicarious liability — Accident — Owner of vehicle — Liability of 1108 B

——S 110B — Contributory negligence — Extent — Appreciation of evidence 1339 A

——S 110B — Assessment of compensation — Total amount of compensation assessed should not be reduced merely because claimant is earning member — Damage sustained is to be assessed and not earning capacity of claimant 1339 B

Motor Vehicles Act (contd)

——S 110CC — Award of Interest — Tribunal may award interest at such rate and from such date not earlier than date of making claim 1339 C

——S 135 — See 597 (SC)

MUNICIPALITIES

——Imposition of tax — See 373 A

—U P Municipalities Act (2 of 1916)

——Ss 128 135 (2) — Municipal Board exempting Arms and Opium from levy of octroi — Sulphur cannot be considered to be Arm and Poste Ka Dhodha and Poste ka Chhitka cannot be considered to be opium for purpose of exemption 879

——Ss 131 and 132 — Objections to proposals to levy tax not considered on merits on ground that they had not been filed within time — Such non consideration will not vitiate levy 373 A

——S 132 — See 373 A

——S 134 (2) — Resolution of Board directing imposition of tax — Non mention of specific date in resolution with effect from which tax was being imposed — Effect — Objections to not filed within time 373 B

——S 135 (2) — See 879

——S 140 (1) — Levy of tax on annual value of building — Estimated value in respect of item not relating directly or necessarily to the erection cost of building has to be deducted from estimated cost of erection — Tax assessed shall be at 10% value thus arrived at 1406 B

——S 164 (2) — Power of appellate authority to review — Scope and ambit of 877

——S 294 — See 1213 A

——S 298 (2) — See 78 A

—Uttar Pradesh Nagar Mahapalikas Adhiniyam (2 of 1959)

——S 172 (2) (b) — U P Nagar Mahapalika Octroi (Second Amendment) Rules (1984) R 18 (2) (9) — Charging of Octroi on consignments — Validity — Provisions of R 18 (2) (a) cannot nullify provisions of S 172 (2) (b) 475

—Uttar Pradesh Nagar Mahapalika Octroi (Second Amendment) Rules (1984)

——R 18 (2) (9) — See 475

Murder Trial

——Appreciation of evidence — See 1035

Muslim Law
——Wife — Maintenance — See 281 (SC)

National Security Act (65 of 1980)
See under Public Safety

Natural Justice
——Deemed vacancy of building — Hearing to favour — See 325 A
——Expire s provision in statute — Court whether can supplant — See 328
——Recovery of loans by Co operative Society — See 816 B
——Revocation of arms licence — See 328 A (FB)

Official Secrets Act (19 of 1923)
——S 3 — See 1177

PANCHAYATS

—U P Kshetra Samitis and Zila Parishads Adhiniyam (33 of 1961)
——S 143 — Imposition of tax and levy of fees — Provisions contained in Adhiniyam are in pari materia with corresponding provisions contained in U P Municipalities Act 1916 1213 A
——S 143 — Levy of licence fee on brick kiln owners — Dispensaries maintained by Zila Parishad in area utilized by workers employed in brick kilns — Roads constructed and maintained by Zila Parishad used for transporting — Licence fees levied by Zila Parishad — Justified 1213 B
——S 237 — U P Zila Parishads (Election of Adhyaksha and Up adhyaksha and Settlement of Disputes) Rules 1963 Rr 25 27 35 and 37 — Election challenged — Order for recount by Tribunal — Validity 1088 A
——S 237 — U P Zila Parishads (Election of Adhyaksha and Up adhyaksha and Settlement of Disputes) Rules 1963 Rr 25 27 35 and 37 — Election challenged — Allegation that one vote in his favour was wrongly rejected and one other in favour of elected candidate wrongly counted — Order for recount could not be restricted only to two votes 1088 B
——S 247 — See 1154
——Ss 251 247 — Complaint for offence under S 240 filed in Court of Additional Sub Divisional Magistrate — Order passed is without jurisdiction — It is Judicial Magistrate who is competent to take cognizance of offence — Order set aside by Sessions Court 1154
——S 270 — See 1033

—U P Panchayat Raj Act (26 of 1947)
——Ss 9 12 C — U P Gaon Sabha Registration of Electors Order (1978) Paragraph 26 — Election petition — Entries in electoral roll are final — They cannot be a subject of challenge in election petition 318 A
——S 12 C — See 318 A
——S 12 C (1) (b) (ii) — Election petition on ground of gross failure to comply — Failure of elected member to point out that his name was included in electoral roll of any other body — Cannot be a ground for challenging election under Cl (ii) 318 B
——S 14 — No confidence motion against Pradhan of Gaon Sabha — Allegation that signatures on notice for such motion were not genuine — Prescribed Authority has power to hold enquiry into the allegation by himself or he can depute someone else for that purpose though R 33 B of U P Panchayat Raj Rules does not specifically provide for such enquiry 1143
——S 14 (1) — Meeting for no-confidence motion — Words at least occurring in S 14 (1) — Mean clear days notice — No confidence motion against Pradhan — Meeting for — 15 days clear notice is a must (Words and Phrases — At least) 1456
——S 49 — See 1258 B
——S 54 — See 1388
——Ss 64 (1) (a) 66 — Jurisdiction of Nyaya Panchayat — Claim of money on basis of contract relating to immoveable property — Nyaya Panchayat has no jurisdiction to try and entertain same 1161
——S 66 — See 1161
——Ss 83 89 — Provisions under S 83 — Interpretation of — Enquiry regarding genuineness of record of Nyaya Panchayat — Criminal P C applicable 1258 A
——S 83 — See also 1258 C
——S 89 — Revision under before S D O — Maintainable — Question whether a revision application is maintainable has to be decided in accordance with provisions in S 89 and not in accordance with provisions contained in Code of Criminal Procedure 1142
——S 89 — See also 1258 A
——Ss 100 (b) and 54 — Recurring fine — Imposition of — Procedure 1388 A

—Uttar Pradesh Panchayat Raj Rules (1947)
——R 33 B — See 1143

Penal Code (45 of 1860)
——S 34 — See 768 A (SC)
——S 34 — See 1192 A

Penal Code (contd)

——Ss 96 299 and 300 — Murder case — Self-defence — Plea when acceptable 29

——S 120 B — See 1177 1241

——S 201 — See 768 A (SC)

——S 268 — Filling up of well from which public at large was drawing water for a long time — Constitutes public nuisance 1388 B

——S 268 — See also 1388 A

——S 290 — See 1386

——Ss 299 300 — Murder — Gun shot injuries causing death — Injury on witness and accused not explained — Evidence of prosecution in conflict with medical evidence — Conviction held illegal 127

——S 299 — See also 29

——S 300 — Murder — Appreciation of evidence — Solitary witness 162 (SC)

——S 300 — Evidence Act (1 of 1872) S 3 — Murder case — Appreciation of evidence 245 C

——S 300 — Murder — Appreciation of evidence 1220 B

——S 300 — Murder trial — Appreciation of evidence — Case of death by asphyxia — Victim a boy of six years of age alleged to have been thrown in canal after throttling — No finger marks found on neck of victim — Medical examination conducted on next day of incident — It cannot be said that death occurred in some way other than by asphyxia as alleged by prosecution 1253 A

——S 300 — Murder — Neither prosecution witnesses were reliable nor investigation was impartial — Presence of eye witnesses on spot was highly doubtful — Medical evidence inconsistent with prosecution case — Conviction of accused was liable to be set aside 1401

——S 300 — Murder — Time of occurrence — Post-mortem report showing that stomach of deceased was empty and that large intestines contained faecal matter — Held mere presence of faecal matter did not mean that occurrence had taken place in early morning hours 1505

——S 300 — See also 29 1035

——S 302 — Murder gruesome and cold blooded — Accused convicted under Section 302/34 and sentenced to death by trial Court — High Court in appeal setting aside conviction and acquitting accused — Supreme Court in special appeal affirming conviction — Supreme Court sentenced accused persons to undergo imprisonment for life Decision of All (HC) Reversed 275 B (SC)

Penal Code (contd)

——S 302 — Capital punishment — Award of — Husband killing wife by burning within one year of marriage — Rarest of rare case — Death sentence should be awarded as deterrent and exemplary sentenced notwithstanding that husband was 25 years of age 1438 B

——S 302 — See also 1192 A

——S 307 — See 683

——S 308 — See 737 A

——S 323 — See 683 737 A

——S 325— See 737 A

——Ss 342 364 365 120B — Conviction under — Appreciation of evidence — Trial Court coming to conclusion that no offence under S 364 read with S 120B and the offence under Section 365 read with Section 120B have been made out — Still in finding accused guilty of offence under S 120 B and S 342 read with S 120B — Order liable to be set aside 1241

——S 364 — See 1241

——S 365 — See 1241

——S 376 — Rape — Evidence and proof 882

——Ss 376 450 — Rape — Conviction for — Appreciation of evidence — Appellant alleged to have committed rape on girl aged 9 years — Prosecution witnesses turned hostile — Appellant's arrest inside house of complainant not denied — Fact also supporting version given by victim and her grandfather — Testimony of victim consistent — Conviction liable to be confirmed 1453 A

——S 376 — See also 1453 B

——S 396 — Dacoity — No delay in lodging FIR — Direct and definite evidence as to recovery arrest and participation of accused in dacoity — Conviction of accused under S 396 held was proper 300 B

——Ss 396 34 201 — Offence under — Police statement of main eye witness recorded after 56 days — Satisfactory explanation — Sessions Judge and High Court considered and accepted it — Supreme Court declined to interfere 768 A (SC)

——Ss 396 34 201 — Conviction under — Accused committed pre planned dacoity and murdered two persons in cruel manner and buried the bodies with a view to cause evidence of crime to disappear — Plea for reduction of sentence to the period already undergone rejected 768 B (SC)

——S 396 — See also 900 A 1211

[illegible] Conviction [illegible]

[illegible]

Penal Code (contd)
date of arrest and recovery of gun and cartridges from accused while entire prosecution version is that accused was arrested on 18 1-1977 when gun was recovered — Prosecution story held was unreliable and doubtful — Accused given benefit of doubt 1163 A
——S 412 — See also 1163 B
——S 450 — See 1453 A B
——S 504 — See 1256
——S 506 — See 1256

Personal Liberty
——Arrest with malicious intent — Compensation — See 653 B (SC)

Pleadings
——Admission — See 693 B

Police Act (5 of 1861)
——S 13 — See 1457
——S 16 — See 1457

Post Graduate Medical Course
——Admission to — See 386

Precedents
——Binding nature of — Certain arguments not appearing to have been made before Supreme Court whose decision was relied on — Point with reference to which argument was subsequently advanced actually decided — Decision is binding 705 B
——Even obiter dicta of High Court is binding on subordinate courts — Subordinate Courts are not expected to give expression contrary to the observation made by the High Court 679 B

Prevention of Corruption Act (2 of 1947)
——S 4 — See 1528 A
——Ss 5 4 and 6— Accused working as Grade II Officer in S B I — Accused receiving amount on false T A claim — Sanction for prosecution obtained from G M for Chief G M and not from Board — Validity of sanction must be proved and no presumption arises under S 4 as to its validity — Held trial and conviction on basis of sanction was illegal 1523 A
——Ss 5 (1) (2) 6 — Prosecution under — Sanction under S 6 — Sanction order not passed by appointing authority — Sanction improper 996
——Ss 5 (1) (d) (2) and 6 — Criminal Law (Amendment) Act (46 of 1952) S 7 — Trial of accused for offences under Ss 5 (1) (d) 5 (2) and Ss 420 468 and 491 by Special Judge — No proper sanction obtained for prosecution — Conviction and sentence has to be set aside — Conviction for offences under Penal Code cannot be sustained as trial Court could not have

Prevention of Corruption Act (contd)
assumed jurisdiction in respect of those sections under S 7 Criminal Law (Amendment) Act without valid sanction 1528 B
——S 5 (1) (d) — See 651 (SC)
——S 5 (2) — See 651 (SC)
——S 6 — See 996 1528 A B

Prevention of Food Adulteration Act (37 of 1954)
——S 2 (ia) (m) — See 595
——Ss 7 and 16 — Sale of adulterated food — Agent and master all are equally liable 1 A
——S 13 (2) — Compliance of — Report of Public Analyst sent to accused returned as address was wrongly written — Fresh intimation sent through registered post — Accused refusing to accept the same — Document on record proving that intimation was sent to accused — Held there was full compliance with S 13 (2) 1235 A
——S 13 (2 B) — Sample — Mere non-observance of time limit for sending report not sufficient to invalidate report 1 B
——S 16 — See 1 A
——Ss 22 A 23 2 (ia) (m) — Prosecution on palm oil not conforming prescribed standard — Standard prescribed under S 22 A — Prosecution is without jurisdiction 595
——S 23 — Prevention of Food Adulteration Rules (1955) Appendix B A 05 23/— — Standard of Ajwayan is prescribed at item A 05 23 and inorganic extraneous matter should not exceed 2% by weight — Report showing that extraneous matter found in sample was more than prescribed limit of two percent — Held sample of Ajwayan taken from accused was adulterated 1235 B
——S 23 — See also 595 1319

Prevention of Food Adulteration Rules (1955)
——Appendix B A 05 23 — See 1235 B
——R 50 — See 1319

Preventive Detention
See under Public Safety
——Continued detention after acquittal in trial on same facts — See 415 C D
——Public order and law and order — See 415 A
——Representation to Government — To whom to be addressed — See 397 B (SC)

Prize Chit
——Scheme — Prohibition — See 485

Prize Chits and Money Circulation Schemes (Banning) Act (43 of 1978)

——S 2 (c) — Prize chit — Lucky draw scheme by firm having element of Prize chits and an element of chance — Held, the Scheme squarely falls within the prohibition of Act 48

Probation of Offenders Act (20 of 1958)

——S 4 — Order sentencing accused under three counts to imprisonment as well as fine and also extending him benefit of Act — Order is illegal 574 A

——S 4 — Order sentencing accused of imprisonment and fine and postponing sentence for one year provided he kept place and remained of good behaviour — Legality 574 B

Provincial Small Cause Courts Act (9 of 1887)

——S 15 — Suit for ejectment by co-shebait in name of deity — Maintainable 1079 A

——S 15 (1) Sch 2 Art 4 and Explanation thereto (substituted by U P Act 37 of 1972) — Building — Includes non residential roofed structure — Suit for eviction of lessee from such structure — Cognizable by a Judge Small Causes Court 554 A

——S 15 (1) Sch 2 Art (4) (Substituted by U P Act 37 of 1972) — Suit for eviction of lessee — Transfer from regular Civil Court to Small Causes Court on allowing objection to jurisdiction raised by lessee — He is estopped from urging that suit is not triable by latter Court 554 F

——S 17 — Ex parte decree — Application for setting aside — Hypothecation bond instead of depositing of decretal amount by Judgment debtor — Acceptance of — Proper 342 A

——S 17 — Ex parte decree — Decree set aside by accepting hypothecation bond executed on basis of Machinery — Articles not embedded in earth — Acceptance of bond is not open to challenge on ground of non registration of bond 342 B

——S 23 — See 363

——S 23 — U P Urban Buildings (Regulation of Letting Rent and Eviction) Act (1972) S 20 — Suit for eviction — Rate of rent — Finding as to — Documentary evidence on record — Conclusion as to rate of rent based on appreciation of evidence — It is finding of fact — Conclusion cannot be said to be erroneous 288 A

——S 23 — Finding recorded on erroneous impression of law by not considering material evidence — Revisional court can remand case for giving fresh finding 495 A

——S 25 — Power of revisional Court to sift evidence 733 B

——S 25 — Revision under — Findings on question of fact can be gone into on limited grounds — High Court's power to scrutiny those findings under Arts 226/227 of the Constitution — Extent 1187

——S 25 — Suit for ejectment — Rent payable per month — Determination of 1079 B

——S 25 — Powers of interference — Finding of fact that tenant did not deny title of landlord — It cannot be interfered with 1305 A

——S 25 — Civil P C (5 of 1908) S 115 — Revision — Scope 1395 D

——S 25 — See also 1047 C

——Sch 2 Art 4 — See 554 A B

Public Premises

——Eviction from — See 783 A

Public Premises (Eviction of Unauthorised Occupants) Act (40 of 1971)

——S 5 — See 783 A B

——S 9 — See 783 B

PUBLIC SAFETY

—Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (52 of 1974)

——S 3 and S 11 — Detention under S 3 — Representation against — Rejection of earlier representation — Failure to pass final order on second representation — Held in facts and circumstances no illegality was committed 1522 B

——S 3 — Detention — Grounds of — Failure to supply certain documents — Disclosure of document found to be not in public interest — Detention not vitiated 1522 C

——S 3 — Detention under — Grounds of — Translated copies of statements of certain witnesses supplied — Held in absence of any mistake in translating statements of witnesses from one language to another detenus right to make representation will not be affected 1522 D

——S 3 — Detention under — Validity — Delay in passing order — Delay because of examinations of number by witnesses and translation of their statements — Held detention not vitiated 1522 E

——S 3 (1) — Notification S O 524(E) D/ 20 7 1981 — Detention under — Order passed by Joint Secretary Ministry of

Public Safety — Conservation of Foreign Exchange and Prevention of Smuggling activities Act (contd)

Finance with a view to preventing detenu from acting in a manner prejudicial to augmentation of foreign exchange — It is not invalid 1522 A

——S 11 — See 1522 B

Criminal L. Amendment Act (46 of 1952)

——S 7 — See 1522 B

National Security Act (65 of 1980)

——S 3 — Preventive detention under — Power of Court to review 46

——S 3 — Detention under — Grounds — Law and order and public order — Distinction 53 B

——S 3 — Detention under — Order of detention passed on basis of subjective satisfaction founded on few incidents of murder and assault — Undue delay in passing detention order — Order is not sustainable 312 A

——S 3 — Detention order — Disturbance of public peace and tranquillity — Solitary incident of kidnapping from verandah of Court using force — No evidence to show that the incident had disturbed the even life of community — Detention not sustainable 312 B

——S 3 — Detention — Language and formation of sentences in grounds of detention almost verbatim reproduction of police order — Non application of mind by District Magistrate — Detention order is vitiated 312 C

——S 3 — Detention under — Detention order served on detenu with delay of about year — No reasonable explanation for delay given by detaining authority — Detention order is invalid 312 D

——S 3 14 — Detention order — Representation for its revocation/cancellation under S 14 made to Central Government — Unduly long delay of 75 days in disposal of by Central Government — Further detention becomes illegal W P No 1318 of 1985 D/ 21 8 1985 (All) Reversed 397 A (SC)

——S 3 — Detention — Alleged involvement of detenu in offence under S 307 I P C — Held on facts non explanation of reasons for his non prosecution — Detention not justified 415 B

——S 3 — Detention — Incident alleged to have been taken place on 27 3 84 — While order of detention passed on 24 2 85 — Detention invalid 415 C

National Security Act (contd)

——S 3 — Law and order — Meaning of 498 A

——S 3 — Ground of detention based on FIR under Ss 384 and 506 IPC — Ground if relates to law and order or public order 498 B

——S 3 — Public order — Meaning of 498 C

——S 3 — Law and order — Meaning of 498 D

——S 3 — Ground of detention relating to booth capturing by detenu and his associates during bye election — Ground whether relates to public order 498 E

——S 3 — Detention order — Ground for detention three years prior to passing of order of detention — Ground is stale and not available for passing order AIR 1985 SC 315 Rel on 916 B (FB)

——S 3 — Detention order — Incidents relied on not subject matter of trial — During detention order incidents enquired into by regular trial and held to be false — Incidents cannot be made basis of detention 916 C (FB)

——Ss 3 (1) 11 (1) — Proceedings before Advisory Board — Hearing detenu by Advisory Board is mandatory 120

——S 3 (1) (a) — Preventive detention — Public order — Grounds based on incident which related only to an individual and had no nexus with community as a whole — Grounds cannot be said to have any nexus with public order — Detention illegal 1227 C

——S 3 (2) — Preventive detention — Legality — Ground not related to public order but based on alleged commission of criminal offences by detenu — Detention is illegal 94 B

——S 3 (2) — Detention under — Counter version of incident given by detenu in FIR — Non-consideration by Magistrate — Order of detention is vitiated 265

——S 3 (2) — Preventive detention — Public order and law and order — Grounds of extortion from person on whom detenu was not on good terms and of attempt to commit murder and snatching away bag containing Salary of Government employees — Incident's do not relate to public order 415 A

——S 3 (2) — Detention — Continued detention — Acquittal of detenu subsequent to judicial trial on same facts which formed basis of detention — Acquittal not on some technical ground — Continued detention of detenu unsustainable 415 D

National Security Act (contd)

——S 3 (2) — Detention — Grounds — Simple threat to witnesses not to give evidence against detenu — It cannot be ground of detention 542 A

——S 3 (2) — Detention — Subjective satisfaction 542 B

——S 3 (2) — Detention — Grounds — Subjective satisfaction of detaining authority — Justiciability 542 C

——S 3 (2) — Order of detention and grounds of detention signed by detaining authority mechanically in casual manner and without application of mind — Order set aside 1186

——Ss 3 (2) 8 — Preventive detention — Grounds of — Materials containing facts which influenced detaining authority in arriving at requisite satisfaction and as such were of basic nature and had nexus with subject of detention not supplied to detenu along with grounds — Detenu is deprived of opportunity of making effective representation 1227 A

——S 3 (2) — Preventive detention — Public order and law and order — Distinction — Instance 1332

——S 3 (3) — Preventive detention — Satisfaction of detaining authority — Relevant material not placed before detaining authority — Order is vitiated 899

——S 3 (4) — Preventive detention — Approval of State Government — Materials of basic nature and relevant to order of detention not sent to State Government for approval together with grounds of detention — Approval accorded by State Government stands vitiated 1227 B

——S 3 (5) — Preventive detention — Provisions of S 3 (5) mandatory — Failure to communicate approval to Central Government within seven days — Detention is illegal and invalid 1172

——S 5 A (as added by Amendment Act No 60 of 1984) — Detention order passed on several grounds — One of the grounds fails — Detention order can be sustained on other grounds Writ Petn No 3196 of 1984 D/- 18 9-1984 (All) **Held no longer good law** in view of AIR 1985 SC 18 916 A **(FB)**

——S 8 — Opportunity to make representation — Denial of — Detention order is vitiated 94 A

——S 8 — See also 1227 A

——S 10 — Constitution of India Article 22 (5) — Preventive detention under S 3 (2) — Representation of detenu not placed before Advisory Board — Mandatory provisions of S 10 violated — Detention order rendered invalid 391

——S 11 — Advisory Board — Period of seven weeks be counted from date of detention 53 A

——S 11 (1) — See 120

——S 14 — Representation to Central Government — To whom to be addressed 397 B (SC)

——S 14 — See also 397 A (SC)

Registration Act (16 of 1908)

——S 17 — See 342 B

Release of Building

——Objection by prospective allottee — Maintainability — See 845 **(FB)**

Release of Premises

——Release partly for business purpose — Dominant purpose test not applicable — See 451

Religious Endowments Act (20 of 1863)

——S 14 — See 163 A B

——Ss 18 14 — Sections 14 and 18 apply to religious endowments created both before and after 1863 163 A

——Ss 18 14 — U P Public Charitable and Hindu Religious Institutions and Endowments Ordinance (16 of 1976) S 94 (1) (2) — Ordinance did not repeal but merely suspended operation of Central Act temporarily — Application under Section 14 made after expiry of Ordinance — Maintainable 163 B

——S 18 — Permission to file suit — Grant of 163 C

Rent

——Fixation of at assessed letting value — See 745 A

——Unconditional deposit — See 572

Representation of the People Act (43 of 1951)

——Ss 2 (1) (c) 33 (4) Proviso 81 100 101 — Conduct of Election Rules (1961) R 4 — Misnomer' — Powers of returning officer 1321

——S 33 (4) Proviso — See 1321

——S 81 — See 625 I (SC) 1321

——S 81 (3) — See 734

——Ss 82 (b) 86 — Election petition — Allegation of corrupt practice against candidate — Candidate not joined as Co-respondent — Ss 86 (1) and 82 (b) attracted — Petition dismissed 1329

——Ss 83 86 87 — Election petition — Dismissal of — It can be for non-compliance of provisions of S 83 625 A (SC)

Representation of the People Act (contd)
——Ss 83 123 (7) — Election petition — Corrupt practice — Material facts and particulars 625 B (SC)
——Ss 83 123 (7) 87 — Corrupt practice — Statement of material particulars 625 C (SC)
——Ss 83 123 (7) — Corrupt practice — Statement of material particulars — Spelling out of 625 D (SC)
——Ss 83 123 (7) — Corrupt practice of displaying objectionable poster in constituency — Copy of the poster not produced — Effect 625 E (SC)
——Ss 83 123 — Corrupt practice — Averments 625 F (SC)
——Ss 83 123 (4) — Corrupt practice — Cause of action — Particulars 625 G (SC)
——Ss 83 87 81 — Civil P C (1908) O 7 R 11 — Election petition filed on last day of limitation — Legality 625 I (SC)
——S 83 — Conduct of Election Rules (1961) R 62 — Allegation of result of election having been materially affected — Recount of votes also sought — Ground of improper acceptance and rejection of large number of votes — Content of objection raised before Returning Officer and name of agent raising objection not stated — Serial numbers of ballot papers so accepted or rejected also not given — No case for recount is made out 1460 A
——S 83 — Amendment of petition — Better particulars required — Court has to grant opportunity to petitioner to furnish same by amendment of petition 1460 C
——Ss 83 and 123 (2) — Election petition — Allegation of corrupt practice by exercising undue influence — Full particulars are necessary — Amendment for giving full particulars can be allowed provided material facts are not missing 1491 A
——S 83 — See also 1460 B
——S 83 (1) — See 1446 A B
——S 86 — See 625 A (SC) 1329
——Ss 86 (1) 81 (3) — Non compliance of S 81 (3) — Petitioner supplying incorrect and incomplete copy of election petition to elected candidate (respondent) and also not furnishing necessary copies of schedules list of documents and affidavit which form part of petition — Petition is liable to be dismissed under S 86 (1) 734
——S 86 (1) — Petition framed vague — Petition not containing precise statement of material facts — No cause of action is

Representation of the People Act (contd)
closed — Petition not maintainable 1470 B
——S 87 — See 625 A C I (SC)
——S 97 Proviso — See 1117
——Ss 100 83 (1) — Election petition — Claim for recount of votes — Material facts necessary to be stated in such claim indicated — Failure to state material facts in petition — Petition is liable to be rejected 1446 A
——Ss 100 83 (1) — Election petition — Claim for recount of votes — Inference that disputed ballot papers were cast by agent and workers of elected candidate in his favour when cannot be drawn 1446 B
——S 100 — See 1321
——S 100 (1) (d) (i) — See 507
——Ss 100 (1) (d) (iii) 83 — Bald statement alleging securing of 30000 votes by elected candidate by adopting corrupt practice of undue influence — Margin of votes with which elected candidate succeeded was 22 553 — Total number of votes claimed in relevant paragraphs coming to 2960 only — Effect 1460 B
——S 100 (1) (d) (iii) — Inspection or recount of ballot papers — Mere allegation of improper reception refusal or rejection of votes — Not sufficient to order inspection 1470 A
——S 101 — See 1321
——S 123 — Corrupt practice — Pleadings — Cause of action 625 H (SC)
——S 123 — Corrupt practices — Expression is repulsive and offensive — Its replacement by neutral and unoffensive expression disapproved practices suggested 625 J (SC)
——S 123 — Election petition — Corrupt practice — Capturing of booth and preventing voters from casting votes — It is corrupt practice 1491 B
——S 123 — See also 625 F (SC)
——S 123 (2) — See 1491 A
——S 123 (4) — See 625 G (SC)
——S 123 (7) — See 625 B, C D E (SC)

Rules for the Recruitment of Ministerial Staff to the Subordinate Offices (1950)
——R 3 — See 662 A B (SC)
——R 5 — See 662 A, B (SC)
——R 6 — See 662 A B (SC)
——R 7 — See 662 A B (SC)

SALES TAX

—Uttar Pradesh Sales Tax Act (15 of 1948)
——S 3 — Notification No SF 3124/X 1012(1) 1966 dtd 1 7 1966 — Paper other

Sales Tax — U P Sales Tax Act (contd)
than hand made paper — Ammonia paper and ferro paper do not fall within the entry Paper other than hand made paper in the notification — Liable to be taxed as unclassified goods 232 (SC)

Societies Registration Act (21 of 1860)
——Ss 1 2 17 18 — New Society claiming to be successor of former one not registered under Act 21 of 1860 — Bar to registration of 1346 A
——S 2 — See 1346 A
——S 5 — Property belonging to unregistered Society — Change in status of that Society — Property continues as being belonging to registered Society 1346 B
——S 17 — See 1346 A
——S 18 — See 1346 A

Specific Relief Act (47 of 1963)
——Ss 5 6 — Suit for possession on basis of possessory title — Claim shifted to adverse possession by amending plaint — Relief mutually sought being smaller claim can be granted 369 D

——Ss 5 6 — Suit for recovery of possession — Plaintiff proving his prior possession or possessory title — Suit is bound to succeed against defendant who has failed to prove better title — Possessory title is good against everybody except the true owner — Suit for possession filed beyond six months but within 12 years — Not barred 369 E

——S 6 — Evidence Act (1 of 1872) Ss 3 18 — Appreciation of evidence — Suit based on title — Admissions by defendant can be taken into account — Suit based on title filed by Society for possession of house belonging to it from defendant — Defendant alleged to be in possession in his capacity as manager of Society — Evidence by defendant showing defendant to be in possession of house as manager of Societies — Held House belonged to Society and not to defendant 1346 C
——S 6 — See also 369 D E
——S 10 — See 58
——S 31 — Suit for cancellation of sale deed on ground of fraud — Burden of proof 1261 B

Stamp Act (2 of 1899)
See under Stamp Duty

STAMP DUTY

—Stamp Act (2 of 1899)
——S 24 Sch 1B Art 23 — Stamp duty — G Company selling lands and buildings to S Company subject to equitable mortgage executed by G Company for obtaining deferred payment guarantee from Bank — Amount of such contingent liability under equitable mortgage would also be chargeable for stamp duty 257 (SC)
——S 47 A (Added by U P Act 11 of 1960) and S 75 Rules made under R 341 — Market value of property — Determination of — R 341 not ultra vires 49 A

——S 47 A (Added by U P Act 11 of 1960) and S 64 — Powers of Collector — He cannot levy penalty 49 B
——S 64 — See 49 B
——S 75 — See 49 A
——Sch 1 B Art 23 — See 257

—Uttar Pradesh Stamp Rules (1942)
——R 151 — See 568 A
——R 154 151 — Cancellation of licence of stamp vendor — Grounds 568 A
——R 154 — Cancellation of licence of stamp vendor on ground of selling of stamps of lower denominations — Proof — Extent of 568 B

Stamp Vendor
——Cancellation of licence — See 568 A

Standards of Weights and Measures Act (60 of 1976)
——S 21 — See 408
——S 26 — See 408

Subordinate Civil Courts Ministerial Establishment Rules (1947)
——Rr 5 11 and Appendix II — Rules for the Recruitment of Ministerial Staff to the Subordinate Offices (1950) Rr 3 5 6 7 — Recruitment of ministerial staff — Provision for made in 1947 Rules — Promulgation of 1950 Rules in supersession of existing Rules — Effect — Entire 1947 Rules cannot stand to be repealed by implication by 1950 Rules 662 A (SC)

——Rr 5 11 and Appendix II — Rules for the Recruitment of Ministerial Staff to the Subordinate Offices (1950) Rr 3 5 6 7 — Subordinate Civil Courts Ministerial Establishment (Amendment) Rules (1969) Rr 2 3 — Recruitment of ministerial staff — Competitive test for held in 1981 — Test held in accordance with 1950 Rules is proper — Amendment Rules of 1969 do not effectively substitute 1950 Rule 1985 All CJ 541 Reversed 662 B (SC)
——Rr 5 11 — See 662 A B (SC)
——Appendix II — See 662 A B (SC)

Subordinate Civil Courts Ministerial Establishment (Amendment) Rules (1969)

——R 2 — See 662 B (SC)
——R 3 — See 662 B (SC)

Succession Act (39 of 1925)

——S 29 (2) — Custom amongst Christians — Intestate succession — Not governed by any custom — Adopted child does not inherit properties of the adoptive father 3 A

——S 63 — Will — Execution — Non registration of will — Effect 488 A
——S 63 — Will — Suspicious circumstances — Undue influence 488 E
——S 63 (a) (b) (c) — Original will — 4 sets of will executed by testator simultaneously on same date — Each set of will was admissible in evidence 488 C
——S 218 — See 467 A
——Ss 234 and 218 — Probate proceedings — Scope of enquiry 467 A
——S 276 — Probate — Grant of — Delay in filing application for grant of probate 488 B
——S 299 — Appeal under — District Judge has no power to review his order — Hence appeal against order dismissing review application is not maintainable 467 B

Sugar Undertakings (Taking Over of Management) Act (49 of 1978)

——S 3 (1) (b) — Cane dues — Arrears exceeding permissible limit — Arrears cannot be confined to certain period — Total arrears up to a particular date have to be calculated AIR 1979 NOC (All) 123 (1979) 5 All LR 10 Reversed 254 (SC)
——S 7 — Notification under — Secured liabilities due to Bank excluded by notification while suspending all liabilities under contract to which notified undertaking was party — Suit against notified sugar undertaking and guarantors filed by bank for recovery of amount due — Suit would remain unaffected by notification 621 (SC)

Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960)

See under Houses and Rents

TENANCY LAWS

—Uttar Pradesh Consolidation of Holdings Act (5 of 1954)

——Pre S 5 (1) (c) (i) and (ii) — Validity — Provisions under S 5 (1) (c) (i) and (ii) cannot be said to be invalid and ultra vires on the ground that these travel beyond the scope and purpose of the Act 769 B

Tenancy Laws — U P Consolidation of Holdings Act (contd)

——S 3 (5) — Expression Tank — It includes tank used for agricultural purpose — Controversy whether it was tank — It can be decided by consolidation authorities — Interpretation of Statutes — Reference to objects and reasons 949 B
——S 3 (5) — See also 949 C
——S 4 (2) — See 1961 (SC)

——S 5 — A executing sale deed of land which was described as Sirdari by Consolidation Officer and no Bhumidhari Sanand was on file to indicate that Bhumidhari had been obtained — Court yet recognizing claim of transferees based on sale deed without addressing itself that Sirdari Plots could not be sold — Held judgment suffered from patent error of law 685 B

——S 5 — A alleged to have executed several sale deeds regarding Sirdari Plots in favour of different persons hence each sale deed was in respect of a part of the holding — Held sale deeds were bad in law in the absence of permission under S 5 and claim based on such sale deeds could not be allowed 685 D
——Ss 5 9 — Application under S 5 for permission to construct house by earlier tenure holder rejected — Subsequent application for permission to construct house on disputed plot by tenure-holders whose names were recorded on direction of Assistant Consolidation Officer — Held not barred by principles of res judicata 769 A
——S 5 — Application under — Grant of permission to opposite parties for making bricks and to construct house on disputed plot — Validity 769 C
——S 5 (1) (c) — Application for permission for transfer of land involved in such proceedings during pendency thereof — Permission cannot be rejected 578 B
——S 5 (1) (c) (i) and (ii) — See 769 E
——S 5 (2) — See 1061 (SC)
——S 5 (2) (a) — Consolidation Courts — Jurisdiction 856 B
——S 5 (2) (a) — See also 1435 A
——S 5 C (ii) — Selling of part of holding by tenure holder — Permission of Settlement Officer (Consolidation) mandatory — No necessity for permission if entire holding is sold 1197 B
——S 9 — A transferring her land to B — C claiming oral gift thereof to him by A raising objection that A having only right of enjoyment and not tenancy right in fee — not held — Held

Tenancy Laws — U P Consolidation of Holdings Act (contd)
was obligatory on C to contest claim during consolidation operation under S 9 and that C had no right to assail sale deed during A s life time 685 E
——Ss 9 9A 11 A — Consolidation proceedings — Claim for co tenancy — Mere non filing of objection does not debar a person from contesting claim as advanced by other side 999 C
——S 9 — See also 769 A 1298 B
——S 9 A —Proceedings on objection — Inquiry — Procedure 418 B
——Ss 9A 10 — U P Tenancy Act (12 of 1939) Ss 35 45 — Claim for co tenancy in respect of certain khatas in question — Determination 999 A
——S 9A — See also 418 A 999 C
——Ss 9A (1) and 11 — Conciliation proceeding under S 9A (1) — Appeal challenging content of deed of conciliation on ground of fraud is maintainable 455 A
——Ss 9A (2) 20 and 48 (3) — Objection to valuation of plots trees wells and other improvements — Bar on 830 A
——S 9A (2) — Lands recorded as bhumidari in names of petitioners — Objection by Pradhan Gaon Sabha and other villagers that it was tank used for agriculture — Held objection was maintainable 949 A
——Ss 9A (2) and 3 (5) — Jurisdiction of consolidation authorities — Scope 949 C
——S 9A (2) — Evidence Act (1872) Ss 3 77 — Consolidation proceedings — Controversy as to death of A — Certified copy of statement of a witness when in fact such witness was alive as to death of A filed — Certified copy of statement of person who in fact is alive and can be examined before Court is not admissible in evidence 1276 C
——S 9A (2) — See also 351 A 860 A 1270 B 1302
——S 10 — See 999 A
——S 11 — Appeal — It cannot be decided without giving opportunity to party to be heard 455 C
——S 11 — See also 455 A 1270 B 1298 B
——S 11 (1) — Interpretation — Right of appeal under — Property entered in name of donor — Donee s name entered in record in her objection under S 9-A in place of donor by ex parte order in her favour — Heirs of donor not impleaded as parties in objection — Death of donor — Tenancy Laws — U P Consolidation of Holdings Act (contd)
Heirs of donor when entitled to file appeal under S 11 1270 A
——S 11A — See 999 C
——S 12 — Proceedings under — Bhumidhar executing will in favour of widow — Only rights of limited owner conferred — Widow cannot transfer her rights by will 647
——S 12 — Proceedings under — Civil suit challenging sale deed pending — Consolidation proceeding cannot be stayed 988
——Ss 12 5 (2) 4 (2) 52 (1) — Transfer of disputed land by daughter of owner — Transfer not out of legal necessity — Suit for recovery of possession by her son — Consolidation Act made applicable to disputed land — Reference to arbitrator by Consolidation Officer — Award — Validity — Transferee if acquired title by adverse possession 1061 (SC)
——Ss 19 (1) (b) Proviso 45 (1) — Allotment of chaks — Appropriate alteration in — Permission of Director of Consolidation — When not necessary 940
——Ss 20 and 48 (3) — Alteration in chak road — It can be made while making adjustment in various chaks in proceedings under Ss 20 and 48 (3) 830 B
——S 20 — Proceedings under — Revision against allowed — Order stating that amendments were consented to by both parties — Restoration application against such order — Dismissal of treating it as review application — Held order was illegal 1514
——S 20 — See also 830 A
——Ss 28 5 (2) (a) — U P Zamindari Abolition and Land Reforms Act (5 of 1954) S 209 — Suit for ejectment under — Limitation — Suit cannot be filed against petitioners obtaining possession under S 28 during period the consolidation operations were in progress — Even if filed same would abate under S 5 (2) (a) 1981 All LJ 276 Not good law in view of AIR 1968 SC 714 and 1970 All LJ 510 (FB) 1435 A
——S 30 — Vendee allotted a chak in consolidation proceedings on basis of sale deed during pendency of proceedings — Sale deed cancelled by Court — Cancellation of sale deed not rendered futile 856 C
——S 41 — U P Land Revenue Act (3 of 1901) S 201 — Consolidation proceedings — Reference — Acceptance of —

Tenancy Laws — U P Consolidation of Holdings Act (contd)
Restoration application — Cannot be allowed unless there is any good cause 117

——S 41 — Dismissal of objection in default — Consolidation Officer has jurisdiction to restore it 458 A
——S 41 — See also 458 B

——S 42 — Consolidation authorities — Jurisdiction of — Right or title on trees standing over Banjar land — Consolidation authorities have jurisdiction to decide ownership if trees standing over land were such in number that it become grove land 1274

——Ss 44-A 9 A — Claim for share in disputed holding — Objection under Section 9 A — Filing of — Forum 418 A
——S 48 — Constitution of India Art 226 — Writ petition against judgment of revisional authority under Consolidation Act — Revisional authority disposing of number of revisions by one judgment — Subject matter of dispute in writ petition arising out of revision between A and B — B cannot challenge maintainability of petition 293 B

——S 48 — Restoration application in respect of revision — Observation in revisional order that parties were heard — Legality 576
——S 48 — Revision — Transfer of consolidation proceedings pending before one settlement officer to another — Validity 578 A
——S 48 — Revisional powers — Exercise of 780
——S 48 — Revision under — Scope and powers of revisional authority 841 A

——S 48 — Revisional powers under — Deputy Director of Consolidation is final Court of fact while exercising such powers 963
——S 48 — Civil P C (5 of 1908) O 41 R 23 — Power of Deputy Director of Consolidation to order remand while exercising revisional powers under S 48 1083
——S 48 — See also 293 C
1335 A
——S 48 (1) — See 940
——S 48 (3) — Order under — Validity 418 C

——S 48 (3) — Reference — Rejection of — Validity 990
——S 48 (3) — See also 830 A B
——S 49 — Bar under — Suit under S 229-B/207 U P Z A and L R Act, challenging consolidation proceedings — Non filing of objection by petitioner during consolidation operation — Suit is barred by S 49 1243

——S 49 — See also 860 A 1238 B
——S 52 — See 860 A
——S 52 (1) — See 1061 (SC)

——S 54 — U P Consolidation of Holdings Rules (1954) R 14 — Consolidation proceedings — Compromise decree — One of the Party to compromise minor — Legal Guardian not appointed for him — Compromise is rendered void and decree nullity 340

——S 172 (2) — Succession — Holding of Mohammedan widow — Under Personal Law she is absolute owner of the land — Widow becoming Bhumidar — No steps taken by Claimant to evict her for about 50 years — Succession to her holding would be governed by S 172 (2) (a) (n) and not S 172 (2) (a) (i) 680

—Uttar Pradesh Consolidation of Holdings Rules (1954)
——R 14 — See 340
——R 65 (2) — See 578 A

—Uttar Pradesh Imposition of Ceiling on Land Holdings Act 1 of 1961
——S 5 (6) and (7) S 12-A Proviso (d) — Determination of surplus land — Benefit of Proviso (d) to S 12-A — Availability 169
——S 10 — See 1425
——S 10 (2) — U P Imposition of Ceiling on Land Holdings (Amendment) Act (38 of 1973) S 19 — Abatement of proceedings — Proceedings for determination of surplus land under S 10 (2) started after Amendment Act came into force — It will not abate 785 B
——S 12-A — Surplus land — Determination 599 A
——S 12 A Proviso (d) — See 169

——Ss 13-A and 38 A — Declaration of surplus lands — Certain land of tenure holder declared surplus — Possession of lands declared surplus could not be taken as they were allotted in chaks of other tenure holders during consolidation operations — Allotment of chaks subsequent to order of declaration of surplus lands becoming final — Prescribed Authority (Ceiling) declaring some other plots to be surplus — Order is valid in view of Sections 13 A and 38-A 913
——S 14 (3) — Collector's power — Scope 599 B

Tenancy Laws — U P Consolidation of Holdings Act (contd)

——S 27 (3) (4) — Leases granted to petitioners under S 27 (3) — Single writ petition challenging their cancellation — Maintainability 1232 A

——S 27 (3) (4) — Cancellation of leases — Lease of surplus land granted under S 27 (3) — Lease cancelled without following procedure under S 27 (4) — Lessee not given opportunity of hearing before cancellation — Order of cancellation not sustainable 1232 B

——Ss 29 30 — U P Land Revenue Act (3 of 1901) S 40A — Mutation is not conclusive evidence regarding title of persons recorded as tenure-holders in revenue records — Ceiling Authority can determine question of title with regard to land in proceedings under Ss 29 30 904 A

——Ss 29 30 — U P Imposition of Ceiling on Land Holdings Rules (1961) R 3 — Plea of heir of not inheriting any land from deceased tenure holder in view of execution of Will by deceased tenure holder — Mutation order in favour of legatees on basis of Will — Failure of Authority to issue notice to legatees for determining genuineness of Will — Vitiates proceedings — Order could be quashed 904 B

——S 30 — See 904 A B

——S 31 (as amended by U P Act 20 of 1976) — Abatement of proceeding — Order declaring excess land under appeal on 10 10 1975 — Proceedings for possession abate though appeal was subsequently dismissed 1152

——S 37 — Declaration of surplus land by prescribed authority — Order set aside in appeal — Prescribed authority has power to direct restitution of possession in accordance with S 144 C P C of land eventually included in ceiling area of landholder 599 C

——S 38A — See 913

——S 44 (2) (a) — U P Imposition of Ceiling on Land Holdings Rules (1961) R 8 — Notice under — Issue of 1091

—Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act (18 of 1973)

——S 19 — See 785 B

—Uttar Pradesh Imposition of Ceiling on Land Holdings Rules (1961)

——R 8 — See 904 B 1091

—Uttar Pradesh Tenancy Act (17 of 1939)

——S 3 (10) — Let for growing of crops — Meaning of — Actual growing of crops after letting is not essential 196 B

——S 35 — U P Zamindari Abolition and Land Reforms Act (1 of 1951) S 154 — Co-tenancy on basis of adverse possession — Care taker cannot acquire right in property of persons who were under his care on basis of adverse possession 839 C

——S 35 — Scope — Claim for co tenancy — A person's father predeceased his grand father — Said person was deprived from inheritance 999 D

——S 35 — See also 999 A

——S 45 — See 999 A

——Ss 49 and 59 — Suit for declaration and partition — Appeal decided in terms of compromise — Binding nature of 965 A

——Ss 49 and 59 — Suit for division of holding — After date of vesting Gaon Sabha made party to appeal and compromise — State not made party — Its non impleadment not fatal 965 C

——S 59 — See 965 A C

—Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act (9 of 1957)

——S 19 (b) — Sub tenant of land — Land converted by him into grove with or without permission — He becomes Asami of land 21 (FB)

—Uttar Pradesh Zamindari Abolition and Land Reforms Act (1 of 1951)

——Ss 3 (14) and 308 — Term land — Scope of — Pasture land is not covered by it — Correlative inference is that revenue Court is not the forum in respect of such land 399 C

——S 14 — Benefit of S 14 — Right of petitioner to claim 465 A

——S 18 — Bhumidhari Rights — Ancestral property belonging to members of joint family — Sons acquire tenancy right by birth — Held sons would equally acquire Bhumidhari right with their father after coming into force of Act — Hence father cannot transfer shares of sons in property 947

——S 18 — See 1061 (SC)

——S 19 — See 71 A

——S 20 (b) (i) — Acquisition of Adhivasi and Sirdari rights under — Tenant of Sir — He cannot be deemed to be recorded occupant 1085

Tenancy Laws — U P Tenancy Act (contd)

——S 20-B (1) — Adhivasi cum-sirdari rights — Claim of 839 B
——S 117 (1) and (6) — See 196 A
——S 122 A (D) — See 188 B
——S 122B — U P Land Laws (Amendment) Ordinance (2 of 1981) S 26 — Revision against order of trial Court — Collector had no jurisdiction to hear revision against order of trial Court 908 A
——Ss 131 (a) 134 137 — Declaration as to Bhumidhar — Testator depositing during his lifetime only a part of twenty times rental in respect of certain land — Remaining amount deposited after his death — Amount deposited after death cannot enure to testator's benefit in respect of acquisition of bhumidhari rights — Testator cannot be deemed to be bhumidhar on date when actually the Will in question was executed 1499 A
——S 134 (as amended by Act 21 of 1962) — T P Act (1882) S 43 — Tenure holder executing sale deed on date on which he was not Bhumidar — Vendor however depositing ten times rental under S 131 on same date — Sale deed executed on that date in favour of vendee is valid 759
——S 134 (as in force in 1969) — Acquiring Bhumidhari rights by Sirdar — Sirdar depositing 10 times rental while making application and balance depositing later on — No illegality 1197 A
——S 134 — Sirdar applying for grant of bhumidari sanad — Sale deed in respect of land executed by him on same day — Sirdar dying before a grant of bhumidari sanad to him — Sanad granted to Sirdar after his death is nullity — Transferee from Sirdar therefore cannot get valid title 1264 C
——S 134 — See also 71 A 1499 A
——S 137 — See 1499 A
——S 153 (1) — See 71 A
——S 154 — Creation of co tenancy by estoppel — Person can acquire co tenancy right on principle of estoppel 839 A
——S 154 — See also 839 C
——Ss 155 164 — Bhumidar transferring possession of land for purpose of securing payment of loan advanced — Transaction would be deemed to be a sale and not a mortgage 388
——S 163 — See 955
——S 164 — See 388
——S 167 — See 955
——Ss 168 A 163 167 176 189 (aa) and 190 (1) (cc) — Transfer of holding in contravention of S 168 A — Rights of vendors would be extinguished and they would have no right to maintain suit for partition under S 176 — Vendee liable for ejectment only on suit of the Gaon Sabha 955
——S 169 — Will in respect of certain land — Statement of attesting witness was not appreciated by Deputy Director of Consolidation — He had considered only factum of registration of Will though it was surrounded by number of suspicious circumstances — His findings in respect of genuineness of Will — Not sustainable 1499 B
——S 171 — See 1270 A
——S 171 (4) — Civil P C (5 of 1908) O 22 R 3 and S 2 (11) — Suit — Abatement of 25 B
——S 176 — Suit under — Application for impleadment by respondents — Their previous suit under S 229-B in respect of same land dismissed — No appeal or revision filed against such dismissal — Their application for impleadment cannot be allowed 1444
——S 176 — See also 955
——S 182-A — Land recorded as bunjar belonging to Gaon Sabha — Grant of asami rights — Validity 182
——S 189 (aa) — See 955
——S 190 (1) (cc) — See 955
——S 195 — See 196 A
——Ss 198 (4) and 333 — Powers of Civil Court — No power to interfere with cancellation of lease 196 C
——S 209 — Suit for ejectment — Limitation — It begins to run from 1st July following date of occupation — Suit filed on 7 9 1972 — Effect of amendment in Serial No 3 of Appendix III 1435 B
——S 209 — See also 1243 1435 A
——S 210 — See 351 B
——S 229 B — Suit for declaration of Bhumidhari rights under S 229 B — Plaintiff claiming to be a co-Bhumidar — Findings on question of ouster of plaintiff from the property in dispute — Board of Revenue not referring to any other material except the alleged admission regarding surrender of property by the plaintiff — Matter remanded to appropriate authority 157 B
——S 229 B — See also 58 1243
——Ss 279 286 — Modes of recovery of arrears of land revenue under Section 279 — Are available for recovery of sums which

Tenancy Laws — U P Tenancy Act (contd)
are recoverable as arrears of land revenue 404 C
——S 279 (1) (b) — U P Zamindari Abolition and Land Reforms Rules (1952) R 25 — Modes for recovery of arrears of land Revenue — Recourse to the mode can be taken only if person possesses sufficient means to discharge liability and not otherwise 404 D
——S 281 — Recovery of electricity dues as arrears of land revenue — Agreement between consumer and Electricity Board providing for industrial supply of electricity — Interpretation 404 A
——S 281 — — See also 404 B
——S 286 — See 404 C
——S 308 — See 399 C
——S 330 — Recovery certificate against petitioner for certain electricity dues — Application under S 20 Arbitration Act by petitioner disputing his liability — Maintainability 1257 A
——S 331 — Bar of jurisdiction of Civil Court — Applicability 25 A
——S 331 — Civil P C (5 of 1908) O 41 R 20 — Dispute about land — Party to suit and first appeal not impleaded in second appeal — Impleadment of such party after expiry of limitation — Effect 817
——S 331 — Bar to jurisdiction of Civil Court — Applicability — Civil suit for cancellation of sale deed — Subsequently relief of possession also claimed — Bar under S 331 does not apply to such suit 1264 D
——Ss 331-A and 229 B — Plaintiff in possession of holding — Interference with by defendant — Suit for injunction not barred under S 331 A 58
——S 331 (1A) — See 331 B
——S 333 333A — Order of Sub Divisional Officer granting permission to lease is revisable 188 A
——S 333 — Civil P C (5 of 1908) Section 151 O 9 R 13 — Revisional powers under U P Act (1950) 1073 B
——S 333 — See 196 C
——S 333A — See 188 A

—Uttar Pradesh Zamindari Abolition and Land Reforms Rules (1952)
——R 25 — See 404 D
——R 236 — See 616 B

Tort
——Contributory negligence — See 1339 A

Town Planning
——Permission to construct building — Appeal against who can file — See 558 B

Transfer of Property Act (4 of 1882)
——S 3 — See 1499 B
——S 43 — See 709
——S 52 — Doctrine of lis pendens — Applicability 965 D
——S 106 — Service of Notice under — Procedure 1047 B
——S 106 — See also 970 A B
——S 107 — Rent note not compulsorily registrable under section — It can be looked into for collateral purposes 495 B
——Ss 111 (e) and 111 (f) — Surrender — Whether question of fact or law 62 B
——S 111 (f) — Implied surrender — What is 1261

United Provinces High Court (Amalgamation) Order (1949)
——Cl 14 — Allahabad High Court Rules (1952) Chap 5 R 1 — Writ petition filed in Lucknow Bench of Allahabad High Court — Ordered to be presented at Allahabad as no part of cause of action had arisen within erstwhile Oudh — Validity 1376 (FB)

Urban Land (Ceiling and Regulation) Act (33 of 1976)
——S 2 (g) — See 112 B
——Ss 2 (q) and 2 (c) — Vacant land — Land earmarked in Master Plan for some other purpose ceases to be agricultural land — It has to be included for calculating ceiling area 1040
——Ss 3 4 — Excess vacant land — Computation of 112 A
——Ss 4 2 (g) — Appurtenant land — Determination of 112 B
——S 4 — See also 112 A
——Ss 6 (1) 8 (3) 9 — Ceiling proceedings — Choice of landholder in respect of surplus land under S 6 (1) — Exercise is not restricted of stage of filing statement — Can also be exercised even after determination of extent of surplus land under S 6 144
——S 8 (3) — Declaration of surplus land — Ex parte order — Order passed without issuing a draft statement and without serving notice for filing objections against draft statement — Order is without jurisdiction 724
——S 8 (3) — See 144
——S 9 — See 144

Urban Land (Ceiling and Regulation) Act (contd.)

——S 36 (1) — Guidelines issued under — Binding effect of 112 C

Uttar Pradesh Accommodation Requisition Act (2 of 1947)

——S 3 (1) (a) (as amended by U P Act No 38 of 1972) — Requisition of godown belonging to petitioner — Notice as required by S 3 (1) (a) not given to petitioner — Order of requisition is liable to be quashed 815

Uttar Pradesh Agricultural Credit Act (19 of 1973)

——S 11A (as inserted by U P Act 19 of 1975) — Loans advanced to agriculturist — Recovery by sending recovery certificate to Collector — Provision as to in S 11A not violative of Art 14 224

——Ss 12 and 25 (as amended by U P Act (19 of 1975) — Uttar Pradesh Agricultural Credit Rules (1975) Rr 12 and 13 — Appeal under S 12 — Court fee — Claim petition giving rise to appeal filed before coming into force of Rules of 1975 — Court fee on memorandum of appeal is governed by law as it stood on date of filing of claim petition 938

——S 25 — See 938

Uttar Pradesh Agricultural Credit Rules (1975)

——R 12 — See 938

——R 13 — See 938

Uttar Pradesh Bhoodan Yagna Act (10 of 1952)

——S 2 (f) (i) — See 1390

——Ss 14 15 -A (as amended in 1978) — Grant of lands under unamended provisions — Petitioner fulfilling conditions required then — Amended provisions introducing new conditions for grant — Cancelling grant under new conditions is illegal 640

——Ss 14 15 A — Grant of land — Conditions required for — It is not necessary that grantee should be landless person at that time — No material to satisfy that petitioners-grantees had suppressed fact that they owned property in city at time of grant in year 1968 — Order cancelling grant made in their favour on this ground is invalid 1248 B

——S 15-A — U P Land Revenue Act (3 of 1901) S 14-A (3) — Evidence Act (10 of 1872) S 114 — Order cancelling grant passed by Additional Collector — Competent — Point that there was no material to indicate that he was authorised by Collector to deal with case not

U P Bhoodan Yagna Act (contd.)

raised either in cancellation proceedings or in petition filed before High Court — Effect 1248 A

——Ss 15A and 2 (f) (i) — Cancellation of grant of land — Order by S D O empowered under S 3 (4) of U P Z A and L R Act to discharge functions of Collector under said Act — It is without jurisdiction 1390 A

——S 15A — Cancellation of grant of land — Challenge as to — Absence of verment in counter as to authority cancelling grant giving opportunity of hearing to grantee — Order is vitiated 1390 B

——S 15A — See 645

——S 15A — See 1248 B

Uttar Pradesh Ceiling on Property (Temporary Restrictions on Transfer) Act (36 of 1972)

——S 3 (5) (as amended by U P Act 45 of 1972) — Agreement to sale immoveable property — Imposition of statutory condition subsequently — Sale-deed executed without compliance with that condition — Cannot be given effect to 963 A

Uttar Pradesh Children Act (1 of 1952)

——S 27 — See 1453 B

——S 30 27 — Penal Code (1860) Sections 376 450 — Release on probation of good conduct — Appellant sentenced under Ss 376 and 450 I P C for committing rape on minor girl — Age of appellant proved to be of 15 years — No previous conviction of appellant — No evidence to prove that he was unruly or of depraved character — Entitled to be released on probation of good conduct 1453 B

Uttar Pradesh Chit Funds Act (53 of 1975)

——S 1 — See also 710 A

——S. 1 — Validity — Act is within legislative competence of State 710 B

——S 14 — U P Chit Fund Rules (1976) R 17 (1) — Validity of Act — Act cannot be held invalid on ground that bullion cannot be offered as security as provided by R 17 (1) 710 C

Uttar Pradesh Chit Funds Rules (1976)

——R 17 (1) — See 710 C

Uttar Pradesh Cinemas (Regulation) Act (3 of 1956)

——S 5 (3) — A partner not included in joint licence issued to some other partners of firm — He cannot be said to be aggrieved person within meaning of S 5 (3) 752 A

U P Cinemas (Regulation) Act (contd)
——S 7 — Jurisdiction of State Government — Nature of 752 B

——S 13 (2) (b) — Cinematograph Act (1918) S 9 — U P Cinematograph Rules (1951) P 39 — Licence fee — Enhancement of by notification issued under R 39 — Valid — R 39 is intra vires provisions of S 13 (2) (b) of U P Act 3 of 1956 96 B

Uttar Pradesh Cinematograph Rules (1951)
——R 19 — Enhancement of licence fee under — Validity 96 A

——R 39 — Levy of licence fee under — Validity — Quid pro quo 96 C

——R 39 — See also 96 B

Uttar Pradesh Coal Control Order (1977)
——Cls 4 to 7 — Violation of order — No prosecution can be initiated 643

U P Consolidation of Holdings Act (5 of 1954)

See under Tenancy Laws

Uttar Pradesh Co operative Societies Act (11 of 1966)

See under Co operative Societies

Uttar Pradesh Dacoity Affected Areas Act (31 of 1983)

——S 7 (1) Proviso — Applicability 427

——S 7 (2) — Trial of scheduled offence by special court — Procedure — Accused summoned by Special Judge for scheduled offence — Objection that list of prosecution witnesses required under S 204 (2), Cr P C was not filed cannot be raised — S 7 (2) excludes procedure relating to inquiry from being invoked in trial before Special Judge 719 A

——S 7 (2) — Trial of scheduled offence by Special Judge — Procedure — Accused summoned by Special Judge for offence under S 395 I P C — Objection that all witnesses for complainant were not examined as required by S 202 (2) Proviso Cr P C cannot be raised in view of S 7 (2) 719 B

Uttar Pradesh Debt Relief Act (4 of 1977)
See under Debt Laws

Uttar Pradesh Defence of India (Requisitioning and Acquisition of Immoveable Property) Rules (1963)

——R 9 — See 1203 A
——R 10 — See 1203 A

Uttar Pradesh Excise Act (4 of 1910)

——S 72 (2) — See 3
——S 72 (8) — See 3

Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act (1986)

——Ss 2 3 19 (4) (b) — Criminal P C (1974) Ss 436 439 — Penal Code (45 of 1860) Ss 504 506 — Offence under Ss 504 506 read with Ss 2 3 of U P Act (1986) — Bail application — Provisions of Section 19 (4) (b) of U P Act (1986) not unreasonable — While considering bail application Court not to ignore provisions of Ss 2 3 and 19 (4) (b) of U P Act (1986) 1236

——S 3 — See 1250
——S 19 (4) (b) — See 1256

U P Gaon Sabha Registration of Electors Order (1978)

——Para 26 — See 318 A

Uttar Pradesh General Clauses Act (1 of 1904)

——S 4 (10) — See 705 A
——S 6 — See 163 B 371 A 1406 A
——S 6B — See 871 A
——S 7 — See 163 B
——S 9 — See 891 A
——S 30 — See 871 A

Uttar Pradesh Government Electricity Undertaking (Dues Recovery) Act (16 of 1958)

——Ss 3 5 — Notice sent to consumer per registered post — Consumer cannot claim that recovery certificate under S 5 was issued against him without sending notice of demand under S 3 404 B

——S 3 — Electrical dues not paid — Notice of demand not served — Resort to coercive process cannot be taken 1451

——S 5 — See 404 A B

Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act (24 of 1971)

——S 6 (2) — Show cause notice in matter of suspension of management — Calling upon management to comply with

U P High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act (contd.)
directions issued by Deputy Director — Not condition precedent 323
——S 5 — Opening of separate account for disbursement of salaries — S 5 does not speak about manager who could operate such account 270 B

Uttar Pradesh Imposition of Ceiling on Land Holdings Act (1 of 1961)
See under Tenancy Laws

Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act (18 of 1973)
See under Tenancy Laws

U P Intermediate Education Act (2 of 1921)
See under Education

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam (25 of 1964)
——S 17 — Market committee — Power to levy and collect market fee — Goods in transit only passing through committee area — Committee cannot levy and collect market fee on such goods 193
——S 17 (as amended by U P Krishi Utpadan Mandi (Amendment) Ordinance (40 of 1983) — Rate of market fee — Payment of additional market fee for period during which Ordinance remained in force — Cannot be challenged as violative of S 17 of Act 871 C
——S 17 (iii) (as amended by U P Krishi Utpadan Mandi (Amendment) Ordinance (40 of 1983)) — Expiry of Krishi Utpadan Mandi Ordinance — Unpaid fee due for period when Ordinance was in force — Fee would remain outstanding as enforceable responsibility even after expiry of Ordinance 871 A
——S 17 (iii) (as amended by U P Krishi Utpadan Mandi (Amendment) Ordinance (40 of 1983)) — Additional market fee as contemplated by Ordinance — Vague averment that huge funds are lying with market samitis and that no services are being rendered — It cannot be held that fee had assumed character of tax on ground of non-providing of services 871 B

U P Kshetra Samitis (Election of Pramukhs and U P Pramukhs and Settlement of Eleiction Disputes) Rules (1962)
——Rr 39 44 — Recrimination application — No limitation is prescribed for moving such application similar to one under proviso to S 97 of the Representation of the People Act 1117
——R 44 — See 1117

Uttar Pradesh Land Laws (Amendment) Ordinance (3 of 1981)
——S 36 — See 908 A

Uttar Pradesh Land Records Manual
——Para 87 — See 1085

Uttar Pradesh Land Reforms (Supplementary) Act (31 of 1952)
——S 3 (1) — See 1061 (SC)

Uttar Pradesh Land Revenue Act (3 of 1901)
——S 14-A (3) — See 1248 A
——Ss 28 219 — U P Consolidation of Holdings Act (5 of 1954) Ss 9 11 49 — Provision under S 219 — Maintainability 1298 E
——S 2 — See also 1298 C
——Ss 33 39 — Orders declaring person to be co-sharer of land along with other person passed during consolidation operations — Denotification of village — Application for correction under S 33/39 of Revenue Act subsequently — Maintainable 860 A
——Ss 33 39 — Application for correction — Limitation 860 B
——Ss 34 40 — Evidence Act (1 of 1872) S 35 — Mutation proceedings — Fiscal in nature — Scope of enquiry is limited to possession only — Compromise in earlier mutation proceedings — Admissible in evidence but only within scope of mutation proceedings 1194
——S 39 — See 860 A B
——S 40 — See 1194
——S 40A — See 904 A
——S 208 — See 458 A
——S 201 — See 117
——S 201 — See 458 A
——S 219 — See 1298 B

Uttar Pradesh Minor Minerals (Concession) Rules (1963)
——R 3 — See 873 A
——R 21 — See 728 A B C
——R 52 — See 873 A
——R 53 — See 873 A
——R 54 (1) — See 728 D

Uttar Pradesh Motor Vehicles Special Provisions Act (27 of 1976)
——Ss 1 (3) and 5 — Motor Vehicles Act (4 of 1939) S 135 (as inserted by Amendment Act 56 of 1969) — Authorisation under S 5 of U P Act — Eligibility for 597 (SC)
——S 5 — See 597 (SC)

Uttar Pradesh Motor Vehicles Taxation Rules (1935)
——Rr 33 35 — Motor vehicle not in use for a period exceeding three months —

U P Motor Vehicles Taxation Rules (contd)

Exemption from tax — Power of Taxation Officer 831

——R 35 — See 834

Uttar Pradesh Municipalities Act (2 of 1916)

See under Municipalities

Uttar Pradesh Muslim Waqfs Act (18 of 1960)

——Ss 2 (1) and (3) 49 A (as amended in 1971) — U P Mushi Waqfs (Amendment) Act (28 of 1971) S 19 — Transfer of waqfs property — Effect of Amending Act 166 A

——S 19 (2) (o) — Appointment of Mutawalli — Powers of District Judge 166 B

——S 29 (8) — Limitation Act (36 of 1963) Ss 5 29 (2) — Proceedings for registration of wakf — Reference for getting registration cancelled — Limitation — S 5 of Limitation Act is applicable to such proceedings 1157 A

——S 29 (8) — See also 1157 B

——S 33 — See 425 A B

——S 44 A — Suspension of Sunni Central Board of Waqf by appointing Administrator set aside subsequently — Actions taken by Administrator during the period of his appointment and order of suspension not invalid 1356

——S 49A — See 166 A

——Ss 49B and 33 — Dispute regarding unauthorised occupation — Property part of registered waqf property — Person aggrieved can file appeal under S 49-B 425 B

——S 49B — See also 425 A

——Ss 76 29 (8) — Erroneous order made by Tribunal in proceedings for registration of Wakf under S 29 (8) — Revision against same under S 76 is not maintainable — Order can be rectified by High Court under S 115 Civil P C or under Art 227 of the Constitution 1157

Uttar Pradesh Muslim Wakfs (Amendment) Act (28 of 1971)

——S 19 — See 166 A

Uttar Pradesh Nagar Mahapalika Adhiniyam (2 of 1959)

See under Municipalities

Uttar Pradesh Nagar Mahapalika Octroi (Second Amendment) Rules (1984)

See under Municipalities

Uttar Pradesh Panchayat Raj Act (26 of 1947)

See under Panchayats

Uttar Pradesh Panchayat Raj Rules (1947)

See under Panchayats

Uttar Pradesh Prevention of Cow Slaughter Act (1 of 1956)

——S 3 — U P Municipalities Act (2 of 1916) S 298 (2) — Bye Laws framed by Municipal Board of Mohammadi — Bye law No 3 — Scope — Slaughter of cattle — Provisions putting ban — Interpretation of different terms in bye-law 78 A

——S 3 — U P Municipalities Act (2 of 1916) S 298 (2) — Bye laws under — Power of inspecting authorities for according permission for slaughter of weak animal — Held impugned bye law was vague and did leave unfettered discretion 78 B

——S 3 — U P Municipalities Act (2 of 1916) S 298 (2) — Bye-laws framed by Municipal Board of Mohammadi Bye law No 9 — Prohibition on slaughter of animal which has become unfit of any service on account of accident — Such animal may be slaughtered if there is no other reason on account of which it ought not to be slaughtered — Condition is maintainable 78 C

Uttar Pradesh Public Charitable and Hindu Religious Institutions and Endowments Ordinance (16 of 1976)

——S 94 (1) (2) — See 163 B

Uttar Pradesh Public Moneys (Recovery of Dues) Act (23 of 1972) (as amended by U P Act 17 of 1975)

——S 3 (4) — Scope — S 3 (4) is special provision contemplated under S 46 of Arbitration Act and it would prevail over terms of S 20 thereof 1257 B

——S 3 (4) — See also 1257 A

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act (22 of 1972)

——s 2 (g) — 'Unauthorised Occupation' — What does not amount to 83

——Ss 5 9 17 (2) — Prescribed authority refusing to make order for eviction — Appeal against — Maintainable 462

——S 9 — U P Public Premises (Eviction of Unauthorised Occupants) Rules (1973) R 9 — Appeal — Person in actual possession ordered to be evicted — Such person is person aggrieved and has right of appeal 172

——S 9 — See also 462

——S 17 (2) — See 462

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Rules (1973)

——R 9 — See 172

Uttar Pradesh (Regulation of Buildings Operations) Act (34 of 1958)
——S 7 (2) (4) — See 558 A
——S 15 (2) — Appeal against permission to raise construction — Competent at instance of one reasonably aggrieved by permission 558 B
——S 15 (2) — Appeal under — Delay — Condonation 558 C
——S 15 A (2) — Revision — Delegation of power 558 D

Uttar Pradesh Regulation of Money Lending Act (29 of 1976)
See under Debt Laws

Uttar Pradesh Regulation of Money Lending Rules (1976)
See under Debt Laws

Uttar Pradesh Revenue Manual
——(Vol 1) Para 482 — See 1022 B

Uttar Pradesh Road Transport Services (Development) Act (9 of 1955)
——S 10 (1) (c) — See 587 (SC)

Uttar Pradesh Sales Tax Act (15 of 1948)
See under Sales Tax

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act (5 of 1982)
——S 13 — Ad hoc appointment — Services not legally terminated — Failure of Commission to recommend any name of any suitable candidate — Held Management must be deemed to have renewed ad hoc appointment of teacher on expiry of 30th June 1025

Uttar Pradesh Sheera Niyantran Adhiniyam (24 of 1964)
——S 7 A (3) and S 8 — Validity of guidelines drafted under — Consultation with Government — Effect on validity of consequential order 1205
——S 8 — See 1205

Uttar Pradesh Stamp Rules (1942)
See under Stamp Duty

Uttar Pradesh State Universities Act (President s Act 10 of 1973)
See under Education

Uttar Pradesh Sugarcane (Purchase Tax) Act (9 of 1961)
——S 3 (1) (1-b) — Exercise of option — Option exercised in prescribed form — Date of start of unit intimated by separate letter — Option not vitiated 291
——S 3 (1) (1-b) — U P Sugarcane (Purchase Tax) Rules (1961) R 13A (1) — Exercise of option of being taxed on assumed basis 335
——S 15 — U P Sugarcane (Purchase Tax) Rules 1961 — R 13-A — Assessment made for period of 22 11-1981 to 20 12 981 — Unit in fact started working on 20 12-1981 — No intimation sent in accordance with R 13A — Omission is technical — No tax can be charged for anterior period on such ground 69

U P Sugarcane (Purchase Tax) Act (contd)

Uttar Pradesh Sugarcane (Purchase Tax) Rules (1961)
——R 13 A — See 69
——R 13 A (1) — See 335

Uttar Pradesh (Temporary) Accommodation Requisition Act (25 of 1947)
See under Houses and Rents

Uttar Pradesh (Temporary) Rent Control and Eviction Act (3 of 1947)
See under Houses and Rents

Uttar Pradesh Tenancy Act (17 of 1939)
See under Tenancy Laws

Uttar Pradesh Tendu Patta (Vyapar Vinियaman) Adhiniyam (19 of 1972)
——S 5 (3) (as amended by Act 5 of 1980) — Constitution of India Art 19 (1) (g) and 19 (6) — Creation of monopoly under Act is valid — Section 5 (2) is not incidental to creation of monopoly — It does not get protection of Art 19 (6) 585 A
——S 5 (3) — See also 585 D

Uttar Pradesh Tendu Patta (Vyapar Vinियaman) (Sanshodhan) Adhiniyam (5 of 1980)
——S 5 — See 585 B C

Uttar Pradesh Town Areas Act (2 of 1914)
——S 21 — Recovery of arrears — Auction for setting right to Collect tahbazari — Highest bidder not depositing amount of bid — Proceedings under S 21 by Magistrate for recovery of amount due to bidder — Not permissible 957

Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act (9 of 1957)
See under Tenancy Laws

Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) Act (13 of 1972)
See under Houses and Rents

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules (1972)
See under Houses and Rents

Uttar Pradesh Weights and Measures (Enforcement) Act (5 of 1959)
——S 2 (ii) — See 409
——Ss 10 2 (ii) — Scope of — Weights and Measures having nothing to do with

U P Weights and Measures (Enforcement) Act (contd)
commercial transaction — Not amenable to jurisdiction of Inspector under S 10 to get the same verified and stamped 406

Uttar Pradesh Zamindari Abolition and Land Reforms Act (1 of 1951)
See under Tenancy Laws

Uttar Pradesh Zamindari Abolition and Land Reforms Rules (1952)
See under Tenancy Laws

Uttar Pradesh Zilla Parishads (Election of Adhyaksha and Up adhyaksha and Settlement of Disputes) Rules (1963)
—R 25 — See 1088 A B
—R 27 — See 1088 A B
—R 35 — See 1088 A B
—R 37 — See 1088 A B

Wakf
—Transfer of property — See 166 A

Weights and Measures
— Verification and stamping — Not necessary when not used in commercial transactions — See 406

Words and Phrases
— Agent — Who is — See 31 C
— At least — See 1466
—Building — See 554 A
—Technical Education — See 1416 B
— Trustee — Who is — See 31 J

Workmen's Compensation Act (8 of 1923)
—S 3 (1) — See 1423

Writ Petition
—Abatement — Setting aside of — Exceptional circumstance — See 178 (SC)
—Special Costs — See 1175 B
—Subsequent events — See 788

LIST OF CASES OVERRULED, REVERSED AND DISSENTED FROM ETC IN ALL L J 1986

Diss = Dissented from in Over = Overruled in Revers = Reversed in

SUPREME COURT

(1975) 1 SCR 493 — **Over 1986 All LJ 215 A (SC)**

ALLAHABAD

1985 All CJ 541 — **Revers 1986 All LJ 662 B C (SC)**

(1980) C M W P No 11377 of 1980 D/ 1 5-1985 (All) — **Revers 1986 All LJ 740 (SC)**

(1985) Civil Misc Writ Petn No 6876 of 1984 D/ 15-7 1985 (All) — **Revers 1986 All LJ 392 (SC)**

(1985) C M W P No 2754 of 1981 D/ 9 4-1985 (All) — Revers 1986 All LJ 271

(1984) Writ Petition No 3196 of 1984 D/ 18 9 1984 (All) — **Held no longer good law** in view of AIR 1985 SC 18 as stated in 1986 All LJ 916 A **(FB)**

(1983) W P No 1980 of 1975 D/- 3 5 1983 (All) — **Revers 1986 All LJ 178 (SC)**

(19) U D 5 All 241 — **Not followed** in view of AIR 19 SC 1 [illegible] in 1986 All LJ 31 B

Allahabad (contd)

1961 All LJ 276 — **Not good law** in view of AIR 1966 SC 714 and 1970 All LJ 510 (FB) as stated in 1986 All LJ 1135 A

(1981) C M W P No 9279 of 1980 D/ 18 5-1981 (All) — **Partly Revers** 1986 All LJ 285

1980 All Rent Ca 549 — **Over** 1986 All LJ 845 **(FB)**

1980 UPLT NOC 22 — **Over** 1986 All LJ 845 **(FB)**

AIR 1979 NOC 123 (1979) 5 All LR 10 — **Revers 1986 All LJ 254 (SC)**

1979 All Rent Cases 397 — **Revers 1986 All LJ 84 A (SC)**

(1978) Criminal Misc Case No 822 of 1978 D/ 20-10-1978 (All) — **Revers** 1986 All LJ 281

1976 All WC 495 — Revers 1986 All LJ 175 A B **(SC)**

AIR 1966 All 265 — **Held per incuriam** 1986 All LJ 328 A **(FB)**

AIR 1930 All 397 — **Not followed** in view of AIR 19 SC 7 [illegible] in 1986 All LJ 31 B

Allahabad (contd.)

AIR 1930 All 573 — **Not followed** in view of AIR 1958 SC 827 as stated in 1986 All LJ 31 B

(1907) ILR 29 All 579 — **Not followed** in view of AIR 1958 SC 827 as stated in 1986 All LJ 31 B

BOMBAY

(1985) C R A No 87 of 1985 (Bom) — **Revers 1986 All LJ 867 (SC)**

GUJARAT

(1976) Criminal Appeal No 11 of 1975 D/ 8 7 76 (Guj) — **Revers 1986 All LJ 651 (SC)**

(1970) Civil Second Appeal No 45 of 1969 D/- 8-7-70 (Guj) — **Revers 1986 All LJ 659 (SC)**

Gujarat (contd)

AIR 1969 Guj 349 — **Held per incuriam** 1986 All LJ 328 A **(FB)**

(1969) 10 Guj LR 503 — **Over 1986 All LJ 659 (SC)**

KERALA

AIR 1971 Ker 162 — **Held per incuriam** 1986 All LJ 328 A **(FB)**

ORISSA

AIR 1970 Orissa — **Held per incuriam** 1986 All LJ 328 A **(FB)**

PUNJAB AND HARYANA

AIR 1972 Punj and Har 192 — **Held per incuriam** 1986 All LJ 328 A **(FB)**

1953 Cri LJ 432 (Saurashtra) — **Diss** 1986 All LJ 1096 B

COMPARATIVE TABLE

1986 Allahabad Law Journal = Other Journals

All LJ	Other Journals
1	1985 1 AJ 348
	(1985) 2 EAC 32
	1985 UP Cri R 197
	1985 LER 569
	1985 All Cri C 411
	1985 All Cri LJ 359
	1986 All Cri R 517
3	1985 All Cri R 469
	1985 All WC 918
	1985 UP Cri R 283
	1986 LJ R 467
	1985 (Supp) All Cri C 194
5	1985 All CJ 980
	1986 All WC 676
9	1985 All WC 606
	(1986) 1 Civ LJ 357
21	AIR 1986 All 111
(1 B)	1985 All CJ 499
	1985 All WC 775
	1985 Rev Dec 406
25	1985 All CJ 426
	1985 All WC 637
	1986 Rev Dec 315
	(1986) 12 All LR (R) 114
29	1985 UP Cri R 194
	1986 All Cri R 121
	1986 All Cri C 265
31	
41	1985 All WC 890
	1985 All Cri R 490
	1985 All Cri R 67
	1986 All Cri C 371
46	(1986) 1 Crimes 728
	(1986) 1 Cri LC 554
	1985 (Supp) All Cri C 398
49	AIR 1986 All 107
53	(1986) 1 Crimes 695
58	1985 Rev Dec 391
62	(1985) 2 All Rent Cas 1
69	
70	1985 UPSC 132
	(1986) 1 Land LR 286
71	(1985) 2 Cur CC 753
	(1985) 11 All LR 733
	(1986) 1 Land LR 515
74	1985 All WC 850
	(1985) 2 All Rent Cas 243
	1985 All CJ 712
76	(1986) 12 All LR 37
78	(1985) 2 MCC 366
	1986 All Cri C 432
	1986 UP Cri R 328
81	1985 All Cri R 445
	1985 All WC 880
	1985 All AC (Cri) 265
	1985 All Cri LJ 271
	1986 All Cri C 42
	1986 All Cri C 70
	(1986) 1 Cri LC 366
83	1985 All WC 738 (1)
	1985 All CJ 482
	(1985) 11 All LR 706
	(1985) 2 All Rent Cas 263 (1)
84	AIR 1986 SC 302
	(1985) 4 SCC 333
	1985 Har Rent R 667
	1985 All WC 903
	(1985) 2 Rent CJ 555
	(1985) 11 All LR 760
	1985 SCFBRC 348
	(1985) 2 All Rent Cas 550
	1986 UPRJ 1
	1986 LJ (SC) 28
	1986 All CJ 676
	1986 MPRCJ 1
	(1986) 1 Supreme 24
	(1986) 1 Cur CC 231
	(1986) 1 Serv LR 36
	1986 IJR 35
	(1986) 1 Ren CJ 123
	(1986) 1 R n CR 82
86	1985 All WC 772
	(1985) 2 All Rent Cas 440
88	1985 Ed Cas 327
	1986 All WC 133
94	(1985) 2 Crimes 881
	1985 UP Cri R 291
	1985 (Supp) All Cri C 273
96	(1986) 2 Cur CC 574
106	
107	1986 Ed Cas 231
109	(1985) 2 All Rent Cas 176

All LJ	Other Journals
109	1985 All WC 935
Con	1985 All CJ 765
	(1986) 12 All LR 59
	1986 UPRJ 90
	(1986) 2 Rent LR 11
115	1984 All WC 715
	1984 (10) All LR 690
	1985 All CJ 27
116	(1985) 2 All Rent Cas 475
	(1985) 11 All LR 794
	1985 All CJ 699
	(1986) 1 Rent CJ 16
	1986 UPRJ 115
	(1986) 2 Rent CR 259
117	1985 All WC 847
	1985 Rev Dec 482
	1986 Rev Dec 279
120	(1986) 1 Crimes 259
	(1986) 1 Cri LC 356
125	(1985) 2 All Rent Cas 471
	(1985) 11 All LR 796
	1985 All WC 967
	1985 All CJ 705
	(1986) 1 Rent CJ 30
	1986 UPRJ 70
127	1985 All Cri C 381
	1986 All Cri R 510
133	(1985) 1 Crimes 657 (2)
	1985 All AC (Cri) 132
135	1986 Ed Cas 249
144	1985 All WC 872
	1985 All CJ 595
	(1985) 11 All LR 783
146	(1986) 1 Civ LJ 630
157	1985 All CJ 755
	1985 Rev Dec 444
160	1985 All WC 841
	1985 All CJ 554
	(1985) 11 All LR 781
	(1986) 1 Cur CC 462
162	AIR 1985 SC 313
	1985 Cri LJ 1921
	(1985) 2 Crimes 861
	1985 SCC (Cri) 508
	1985 Cri LR (SC) 482
	1985 SC Cri R 294
	1985 All Cri R 532
	1985 Cur Cri J (SC) 486
	1985 All Cri C 431
	1985 Supp SCC 596
	1985 Cri App R (SC) 355
	1985 All WC 1017
	(1986) 1 Rec Cri R 42
	(1986) 1 Supreme 35
	1986 East Cri C 150
	1986 LS (SC) 40
	1986 Chand Cri C (SC) 41
	(1986) 1 Chand LR (Cri) 565
	1986 All AC (Cri) 3
	1986 All Cri LJ 54
163	1985 All WC 932
166	(1985) 11 All LR 721
	1985 All CJ 700

All LJ	Other Journals
169	
177	(1985) 1 All Rent Cas 319
	1985 All WC 458
	(1985) 11 All LR 780
175	AIR 1985 SC 1384
	1985 Cri LJ 2009
	(1985) 3 SCC 703
	1985 SCC (Cri) 452
	1985 Cri LR (SC) 395
	1985 All Cri R 440
	1985 LJ (SC) 906
	1985 Cur Cri J (SC) 437
	1985 All WC 868
	1985 Cri App R (SC) 241
	1985 SC Cri R 377
	1985 DR 269
	(1986) 1 SCWR 97
	1985 Mad LJ (Cri) 478
	(1986) 1 Chand LR (Cri) 141
	1986 All Cri LJ 16
	(1985) 2 Rec Cri R 287
	(1985) 2 LS (SC) 32
	1985 (Supp) All Cri C 446
176	AIR 1985 SC 606
	(1985) 1 SCC 471
	1985 All CJ 116
	(1985) 11 All LR 171
	(1985) 1 Andh LT 305
	1985 Pun LJ 164
	1985 Har Rent R 269
	1985 (1) Civ LJ 498
	(1985) 1 Cur LJ (Civ Cri) 652
	1985 Rev LR 195
	(1985) 1 Land LR 592
	1985 LJ (SC) 551
	1985 ACJ 569
	1985 Cur Civ LJ (SC) 768
	(1985) 2 TAC 431
	(1985) 2 ACC 583
	(1986) 12 All LR 503
179	1985 All CJ 287
	1984 All WC (Supp) 699
183	(1986) 12 All LR (R) 12
	1986 Rev Dec 313
184	1986 Ed Cas 136
	1986 All WC 798
186	1985 All WC 695
	(1985) 11 All LR 625
	1985 All CJ 593
188	1986 Rev Dec 8
193	
196	1985 Rev Dec 448
201	1985 All CJ 630
204	1985 All WC 845
	1985 All CJ 586
	(1985) 2 All Rent Cas 346 (2)
	(1985) 11 All LR 764
	1986 UPRJ 17

All LJ	Other Journals
205	1984 All WC 1071
	1984 UPLBEC 808
	1984 Ed Cas 331
	1985 UPSC 56
211	(1986) 1 Civ LJ 652
215	AIR 1986 SC 319
	(1985) 4 SCC 557
	1986 LJ (SC) 171
	(1986) 1 Supreme 405
	(1986) 1 Cur CC 572
224	AIR 1986 All 115
233	(1985) 2 All Rent Cas 415
	1985 All WC 1024
	(1986) 1 Rent CJ 224
	1986 All CJ 11
	1986 UPRJ 241
236	1986 All WC 81
	1985 Ed Cas 340
240	(1985) 2 All Rent Cas 455
245	1986 All Cri C 16
	1986 All Cri R 231
	(1986) 1 Cri LC 1
	1985 All AC (Cri) 129
	1985 (Supp) All Cri C 413
252	AIR 1986 SC 386
	(1986) 1 SCC 23
	1986 All Tax J 78
	(1986) 8 LCC 147
	(1986) 23 TTT 5
	(1986) 63 STC 76
	1986 ITR 117
	(1986) 1 Supreme 284
	1986 Tax TR 2249
	1986 Taxation 80 (7) 21
	(1986) 1 Cur CC 254
	1986 SCC (Tax) 155
	1986 LJ (SC) 142
	(1986) 16 STJ 14
	1986 UPTC 398
	(1986) 7 TCR 266
	(1986) 19 VKN 236
	1986 STJ (SC) 99
254	AIR 1986 SC 388
	(1986) 1 SCC 26
	1986 LJ (SC) 152
	(1986) 1 Cur CC 250
	(1986) 1 Supreme 281
	(1986) 1 Comp LJ 199
257	AIR 1986 SC 403
	(1986) 1 SCC 351
	(1986) 1 Supreme 569
	(1986) 1 Land LR 367
	(1986) 1 Cur Civ LJ (SC) 217
	(1986) 1 Cur CC 711
	(1986) 1 Civ LJ 428
	1986 All WC 17
	1986 LJ (SC) 504
	(1986) 1 Crimes 151
	1985 All Cri LJ 357
	(1986) 2 Cri LC 145
267	1985 All AC (Cri) 145
	1985 All Cri C 432
	1986 All Cri R 160
	1986 All Cri LJ 264
	(1986) 2 Cri LC 161

All LJ	Other Journals
270	1985 Ld Cas 62
	1985 UPLBEC 551
271	AIR 1986 SC 539
	(1986) 1 SCC 615
	(1986) 1 SCJ 1-2
	(1986) 99 Mad LW 481
	1986 UJ (SC) 287
	1986 Cur Cr LJ (SC) 189
	(1986) 12 All LR 165
	1986 All WC 181
	(1986) 2 All Rent Cas 80
	1986 East Cri C 96
	1986 BBCJ (SC) 35
	1986 SCFBRC 323
	1986 UPRJ 363
275	AIR 1986 SC 576
	1986 Cri LJ 546
	1985 SCC (Cri) 478
	(1985) 2 Crimes 708
	1985 SC Cri R 370
	1985 Cri App R (SC) 253
	1985 Cri LR (SC) 437
	1985 Cur Cri J (SC) 448
	1985 Supp SCC 379
	(1986) 1 Supreme 80
	1986 All Cri R 349
	1985 (Supp) All Cri C 247
281	AIR 1986 SC 587
	1986 Cri LJ 556
	(1986) 1 SCC 398
	1986 Pat LJR (SC) 11
	1986 Cur Cri J (SC) 89
	1986 All AC (Cri) 45
	1986 East Cri C 300
	(1986) 1 Cri LC 230
	1986 SCC (Cri) 72
	1986 Cri App R (SC) 35
	1986 All Cri C 143
	1986 All Cri R 152
	(1986) 1 SCWR 133
	(1986) 2 DMC 1
	(1986) 2 Rec Cri R 40
	1986 Marriage LJ 181
	1986 UJ (SC) 226
	1986 SC Cri R 60
	(1986) 2 Supreme 413
	1986 BLJR 401
	1986 All Cri LJ 114
	(1986) 2 Crimes 143
	1985 Chand Cri C (SC) 54
	1986 LS (SC) 61
	1986 Mat LR 121
282	1985 All WC 1041
	(1986) 1 Crimes 50
	1986 All Cri C 7
	1986 All Cri R 1
	(1986) 2 Cri LC 63
285	AIR 1985 SC 75
	1986 Lab IC 491
	1984 UJ (SC) 1094
	(1985) 1 SCC 120
285 Con	(1984) 49 Fac LR 399
	(1985) 1 SCWR 4
	1985 SCC (Lab) 172
	1985 LIR 70
	1985 Recent Laws 1
	1985 Cur Cri LJ (SC) 707
	(1986) 1 Lab LN 699
	(1985) 3 Serv LR 56
286	1985 UPLBEC 242
	1986 Ed Cas 263
288	(1985) 2 All Rent Cas 465
	1985 All CJ 636
	(1985) 11 All LR 800
	(1986) 1 Ren CJ 236
291	1985 All CJ 613
	1986 UPTC 19
	1986 All Tax J 169
295	1986 All CJ 60
	1986 Rev Dec 26
297	
300	1986 All Cri R 36
	1986 All Cri C 72
	1986 All WC 41
	(1986) 1 Cri LC 668
306	(1985) 2 All Rent Cas 500
	1986 All CJ 782
308	1986 All WC 427
	1986 All Cri R 242
	1986 UP Cri R 164
	1986 All Cri C 280
	1986 All Cri LJ 172
	(1986) 2 Cri LC 52
	(1986) 12 All LR 450
310	(1985) 2 All Rent Cas 483
	1985 All WC 960
	1985 All CJ 728
	(1986) 1 Ren CJ 27
	1986 UPRJ 61
	(1986) 12 All LR 4
312	(1986) 1 Crimes 214
314	1985 All CJ 601
315	1985 All CJ 690
318	1986 All WC 381
	(1986) 12 All LR 252
	1986 UPLBEC 292
323	(1985) 11 All LR 788
	1985 Ed Cas 285
	1986 All WC 16
	1986 UPLBEC 434
324	
328	
(FB)	AIR 1986 All 142
	1986 Cri LJ 817
	1984 All WC 145
	1984 All Cri R 118
	(1984) 10 All LR 223
	1984 UP Cri R 152
	1986 All Cri LJ 163
335	1985 All WC 912
	1985 All Tax J 613
	(1986) 12 All LR 93
	1986 UPTC 36
336	1986 All Cri R 40
	1986 All AC (Cri) 78
	1986 All WC 4
	(1986) 1 Cri LC 537
	1985 (Supp) All Cri C 295
340	1985 All WC 1032
	1986 Rev Dec 5
342	(1985) 1 All Rent Cas 122
	(1985) 11 All LR 220
346	1985 UP Cri R 325
	(1986) 1 Crimes 337
	1986 All Cri C 80
	1986 All WC 340
	1986 All Cri R 181
	1986 All AC (Cri) 109
347	1986 All CJ 29
	(1986) 12 All LR 125
	1986 UPRJ 192
	1986 All WC 230
	(1986) 1 All Rent Cas 15
351	1986 All CJ 43
	1986 All WC 104
	1986 Rev Dec 82
354	(1985) 2 All Rent Cas 419
	(1986) 12 All LR 1
	(1986) 1 Civ LJ 595
357	(1985) 2 Crimes 998
	1985 All Cri R 534
	1985 UP Cri R 294
	1986 All Cri C 1
	1986 All AC (Cri) 19
	1986 All Cri LJ 149
359	1984 All WC 600
	1984 Ed Cas 212
	1984 UPSC 338
	1984 UPLBEC 734
	(1986) 1 Civ LJ 673
363	1986 UPRJ 202
	(1986) 2 All Rent Cas 49
369	1986 Rev Dec 77
	(1986) 1 Civ LJ 624
	1986 All WC 108
	1986 Cri App R (SC) 223
	1986 Mad LW (Cri) 440
373	1985 UPLBEC 814
381	
386	1986 Ed Cas 23
388	1985 All CJ 678
	1986 All WC 513
	1986 Rev Dec 35
391	1985 (Supp) All Cri C 195
392	AIR 1986 SC 789
	(1986) 1 SCC 685
	1986 Har Rent R 186
	(1986) 1 Land LR 629
	1986 UJ (SC) 380
	(1986) 12 All LR 177
	(1986) 1 SCJ 257
	(1986) 1 Supreme 643
	(1986) 1 Land LR 494
	(1986) 1 Cur CC 899
393	AIR 1986 SC 753
	(1985) 3 SCC 364
	(1985) 2 Ren CJ 236
	1985 SC FBRC 731
	(1985) 11 All LR 569

All LJ	Other Journals
393	(1985) 2 Rent CR 359
Con	1985 All CJ 483 (2)
	(1985) 2 All Rent Cas 298
	1986 All WC 517
	1986 UJ (SC) 468
	1986 UPRJ 93
397	AIR 1986 SC 356
	1986 Cri LJ 493
	1986 SCC (Cri) 60
	1986 Cri App R (SC) 9
	(1986) 1 SCC 650
	1986 UJ (SC) 724
	1986 Cur Cri J (SC) 110
	(1986) 1 Cri LC 303
	(1986) 1 Chand LR (Cri) 639
	1986 All Cri R 325
	1986 SC Cri R 51
	1986 Pat LJR (SC) 17 (2)
	1986 All AC (Cri) 1
	(1986) 2 Crimes 465
	1986 All WC 668
	1986 Cri LR (SC) 333
399	1986 All CJ 103
	(1986) 12 All LR (R) 93
	1986 Rev Dec 73
404	1986 Rev Dec 173
408	1986 All Cri C 350
415	(1986) 1 Crimes 334
	(1986) 1 Cri LC 290
	1985 (Supp) All Cri C 393
418	(1986) 12 All LR (R) 44
	1986 Rev Dec 99
423	1985 All CJ 584
	(1985) 2 All Rent Cas 490
	1985 All WC 965
	(1986) 1 Rent CJ 187
	1986 UPRJ 12
	(1986) 12 All LR 67
	(1986) 1 Rent UR 661
425	1985 All WC 948
	1985 All CJ 693
427	1985 All WC 373
	1985 UP Cri R 125
	1985 (Supp) All Cri C 177
428	1986 Ed Cas 17
	1986 All WC 329
432	1986 UPRJ 35
	(1986) 1 Ren CJ 364
	(1986) 1 All Rent Cas 133
436	1986 UPRJ 41
	(1986) 1 All Rent Cas 82
	1986 All CJ 273
	(1986) 2 Rent CJ 681
438	(1986) 2 All Rent Cas 526
444	(1986) 1 All Rent Cas 63
	1986 All CJ 304

All LJ	Other Journals
448	1986 All CJ 24
	(1986) 2 All Rent Cas 419
451	(1985) 11 All LR 605
	(1985) 2 All Rent Cas 585
455	1985 All WC 769
	1985 Rev Dec 459
458	1985 Rev Dec 487
	1986 All CJ 78
460	1985 All CJ 374
	(1985) 11 All LR 737
462	1985 All WC 883
	1985 All CJ 592
	(1985) 2 All Rent C 436
	(1985) 11 All LR 759
	1986 UPRJ 30
463	(1985) 10 All LR (R) 88
	1985 Rev Dec 433
466	1985 All CJ 380
	1985 All WC 794
	1985 Rev Dec 435
467	1985 All WC 221
	(1985) 11 All LR 762
	(1986) 2 Cri LJ 30
470	1986 All Cri R 299
	1986 All WC 612
	1986 All Cri C 219
475	1985 All CJ 747
	(1986) 1 All LR 62
	1986 UPLBLC 66
	1986 All WC 1
	(1986) 1 MCC 21
477	1986 UPLBEC 501
485	1986 All CJ 180
	(1986) 1 Cur CC 602
486	1986 All WC 120
	1986 All CJ 189
	(1986) 12 All LR 302
	(1986) 2 Cri LJ 18
495	(1986) 1 All Rent Cas 30
	1986 All CJ 143
498	(1986) 1 Crimes 503
507	1986 UPLBEC 348
526	AIR 1986 SC 756
	1985 All CJ 239
	1986 All CJ 161
	(1986) 2 Cri LJ 172
	(1986) 2 Cur CC 618
532	(1986) 2 Cri LJ 180
	(1986) 2 Cur CC 191
	1986 All CJ 491
	1986 UPRJ 417
535	(1985) 1 All Rent Cas 2 4
	1986 All WC 595
	(1986) 1 Ren CJ 693
542	
547	(1986) 1 All LR 77
	1986 All WC 593
550	1986 All Cri R 143
	1986 All Cri C 119
	1986 All WC 275
	1986 UP Cri R 75
554	(1986) 2 All Rent Cas 533
	(1986) 12 All LR 73
	1986 All WC 360

All LJ	Other Journals
558	1986 UPLBLC 458
565	1986 All WC 257
	1986 All CJ 170
570	1986 All WC 271
	1986 UPLBEC 3 4
572	1986 All CJ 40
	1986 UPRJ 141
	(1986) 1 All Rent Cas 40
	(1986) 12 All LR 148
	1986 All WC 600
574	1985 UP Cri R 325
	(1986) 1 Crimes 333
	1986 All Cri C 67
	1986 All WC 354
	1986 All Cri R 186
	1986 All AC (Cri) 57
576	1986 All WC 623
	(1986) 12 All LR (R) 99
	1986 Rev Dec 257
578	(1985) 11 All LR (R) 53
	1985 Rev Dec 427
	1985 All WC 1037
582	1986 UPLBLC 50
	1986 All WC 10
	1986 All CJ 176
	(1986) 2 Cri LJ 169
585	
595	1986 LLR 194
	1986 All Cri R 172
	1986 All WC 250
	1986 UP Cri R 107
	(1986) 1 LAC 273
597	AIR 1986 SC 1117
	(1986) 1 SCC 651
	(1986) 12 All LR 591
	(1986) 2 SCJ 187
599	
607	1985 All WC 1035
	1986 All Cri R 8
	1986 All Cri C 29
	1986 All AC (Cri) 85
	1986 All WC 71
	(1986) 1 All Rent Cas 98
613	1986 All Cri R 268
616	(1986) 12 All LR 202
	1986 All WC 452
	1986 Rev Dec 290
	1986 UPLBEC 441
618	1984 All WC 759
	(1984) 2 All Rent Cas 452
621	AIR 1986 SC 565
	(1986) 2 SCC 145
	(1986) 1 Cum LJ 797
	(1986) 12 All LR 121
	(1986) 1 SCJ 367
	(1986) 1 Cur CC 1021
	1986 Cri LR (SC) 215
	(1986) 2 Supreme 145
	(1986) 59 Com Cas 562
	1986 Bank J 434
	(1986) 2 Arbi LR 1
	1986 UJ (SC) 757
625	AIR 1986 SC 1253
	(1986) 2 UJ (SC) 63

All LJ	Other Journals
625	1986 Supp SCC 315
Con	(1986) 2 SCJ 365
643	1986 All Cri R 67
	1986 LJR 149
	1986 All Cri C 144
	1986 All WC 74
	1986 LP Cri R 183
645	1986 All CJ 150
	1986 All WC 666
647	(1986) 12 All LR Rev
	1986 Rev Dec 143
650	1985 All WC 740
	(1986) 2 All Rent Cas 236
	(1985) 2 Rent CJ 617
	(1986) 1 All Rent Cas 172
651	AIR 1986 SC 307
	1985 Cri LJ 1901
	(1985) 4 SCC 254
	(1985) 2 Crimes 7-9
	1985 SCC (Cri) 511
	1985 Cur Cri J (SC) 479
	1985 Cri LR (SC) 547
	1985 Cri App R (SC) 330
	(1986) 1 Rec Cri R 40
	(1986) 1 Supreme 74
	(1986) 1 Cri J C 60
	1986 Chand Cri C (SC) 31
	1986 Mad LJ (Cri) 4
	1986 Ewn Cri C 67
	1986 UP Cri R 1
	1986 Mad LW (Cri) 170
	(1986) 1 All Cri LR 601
	(1986) 1 Cur LJ (Cri & Cri) 615
	1986 All Cri LJ 80
	1986 Mad LW (Cri) 170
	1986 All Cri C 360
	(1986) 12 All LR 644
	1986 All AC (Cri) 14
653	AIR 1986 SC 494
	1986 Cri LJ 192
	(1985) 4 SCC 677
	1985 Cur Cri J 516
	1986 SC Cri R 20
	1986 SCC (Cri) 47
	1986 Cri App R (SC) 12
	1986 Cri LR (SC) 66
	1986 Chand Cri C 43
	(1986) 1 APLJ (SC) 56
	(1986) 1 Chand LR (Cri) 519
	1986 Mad LJ (Cri) 32
	(1986) 1 Rec Cri R 348
	1986 LJ (SC) 458
	1986 All Cri LJ 62
	1986 All Cri C 356
	1986 ACJ 867

All LJ	Other Journals
659	AIR 1986 SC 503
	(1986) 1 SCC 566
	1986 LJ (SC) 158
	1986 LJR 54
	(1986) 1 SCWR 137
	(1986) 1 Cur CC 708
	1986 Cur Cri LJ (SC) 124
	(1986) 1 Land LR 511
	(1986) 1 Supreme 566
	1986 (1) 27 Guj LR 600
	(1986) 1 SCJ 34
	1986 Rev Dec 284
662	AIR 1986 SC 1043
	1986 Lab IC 796
	(1986) 2 Supreme 284
	(1986) 1 Serv LR 699
	(1986) 2 Lab LN 38
	(1986) 1 SCJ 606
	1986 SCC (Lab) 644
	(1986) 2 LJ (SC) 184
	1986 Supp SCC 285
	(1986) 3 Serv LJ 235
673	AIR 1986 SC 1749
(SC)	(1986) 3 SCC 259
	(1986) 2 Cur CC 541
	(1986) 2 LJ (SC) 1
	(1986) 3 Supreme 61
	(1986) 2 Cur LJ (Cri & Cri) 628
	(1986) 2 SCJ 475
676	1986 All Cri R 63
	1986 All Cri C 97
	(1986) 12 All LR 154
	1986 All WC 139
	1986 UP Cri R 73
	(1986) 1 All Cri LR 584
	(1986) 1 Hindu LR 464
	1986 All Cri LJ 135
679	1986 All Cri R 70
	1986 All Cri C 153
	1986 All WC 143
680	1986 All CJ 209
	1986 All WC 483
	1986 Rev Dec 182
	1985 (Supp) All Cri C 407
68	1986 All Cri R 176
	1986 All WC 364
	1986 All AC (Cri) 76
	(1986) 2 Crimes 171
685	1985 Rev Dec 231
	1985 All CJ 724
689	(1986) 12 All LR 131
	1986 All CJ 184
	(1986) 1 All Rent Cas 74
	1986 UPRJ 197
693	
700	1986 All CJ 219
	(1986) 1 Ren CJ 429
	(1986) 12 All LR 236
	1986 All WC 48
	(1986) 1 Rent LR 532
708	1986 All CJ 54
	1986 UPRJ 138
	(1986) 1 All Rent Cas 27

All LJ	Other Journals
710	
717	1986 All WC 370
	1986 All CJ 300
719	1986 All Cri R 208
	1986 All WC 270
	(1986) 2 Crimes 123
722	1986 All Cri C 173
	1986 UP Cri R 44
	1986 All Cri R 247
	(1986) 2 Crimes 649
	1986 All Cri LJ 261
734	1986 All WC 222
	(1986) 12 All LR 216
	1986 All CJ 265
727	1986 UP Cri R 76
	(1986) 2 Crimes 110
	1986 All Cri R 335
	1986 All WC 617
	1986 All Cri C 279
	1985 (Supp) All Cri C 259
728	
732	(1986) 1 All Rent Cas 46
	1986 All WC 216
734	
737	1985 All Cri R 448
	1985 All WC 884
	1986 All AC (Cri) 60
	1986 All Cri LJ 144
	1985 (Supp) All Cri C 276
	1986 UP Cri R 350
740	AIR 1986 SC 1643
	1986 All WC 425
	(1986) 2 SCC 428
	(1986) 12 All LR 245
	(1986) 1 Ren CJ 653
	1986 All CJ 319
	1986 SCFBRC 271
	(1986) 2 All Rent Cas 6
	1986 UPRJ 256
	1986 MPRCJ 155
	(1986) 2 LJ (SC) 287
	(1986) 2 Rent LR 181
	(1986) 2 Ren CR 392
742	1986 All WC 115
	(1986) 12 All LR 212
745	(1986) 1 All Rent Cas 267
	1986 All WC 89
	1986 UPRJ 156
747	1986 All CJ 108
	1986 UPLBEC 257
749	1986 UPLBEC 179
	1986 Ed Cas 12
	1986 All WC 287
752	1986 All WC 474
	(1986) 12 All LR 196
755	(1986) 1 All Rent Cas 432
	1986 All WC 498
	(1986) 12 All LR 570
759	1986 All CJ 248
	1986 All WC 594
	1986 Rev Dec 203
763	1986 All CJ 138
	(1986) 1 All Rent Cas 25

All LJ — Other Journal

763 Con
1986 All WC 155
1986 UPRJ 219
(1986) 1 Ren CJ 631

764
AIR 1986 SC 1645
(1986) 2 SCC 554
(1986) 12 All LR 298
(1986) 2 Alr Rent Cas 1
1986 SCEBRC 265
1986 UPRJ 296
(1986) 2 SCJ 333
(1986) 2 Cur CC 775
1986 MPRCJ 194
(1986) 2 Ren CJ 408
(1986) 2 UJ (SC) 452
(1986) 2 Ren CR 394
(1986) 3 Supreme 333

765
AIR 1986 SC 990
1986 Cri LJ 1083
1986 SCC (Cri) 174
(1986) 2 SCC 409
1986 Cri LR (SC) 183
1986 Cur Cri J (SC) 148
1986 All Cri R 294
1986 East Cri C 384
1986 LS (SC) 75
(1986) 2 Cur Civ LJ (SC) 66
(1986) 12 All LR 297
1986 Pat LJR (SC) 33
1986 Cri App R (SC) 80
1986 SC Cri R 115
(1986) 2 Crimes 670
1986 UP Cri R 229
1986 Cal Cri LR (SC) 81

769
1986 All WC 404
1986 Rev Dec 119

774
AIR 1986 SC 991
1986 Cri LJ 1084
1986 SCC (Cri) 166
1986 All Cri C 178
(1986) 2 SCC 401
(1986) 2 Crimes 40
1986 Cri LR (SC) 188
1986 All WC 567
(1986) 2 Supreme 1
1986 Cur Cri J (SC) 165
1986 All Cri R 345
1986 SC Cri R 116
(1986) 1 SCWR 19
1986 Cal Cri LR (SC) 83
1986 Cri App R (SC) 85
1986 BLJR 394
1986 BBCJ (SC) 46
1986 UP Cri R 189
(1986) 2 Rec Cri R 132
1986 East Cri C 570
(1986) 2 Rec Cri R 437
(1986) 2 Chand LR (Cri) 434

778
(1986) 1 All Rent Cas 250

All LJ — Other Journals

778 Con
1986 All CJ 134
1986 All WC 471
(1986) 1 Rent CJ 475
1986 UPRJ 172
(1986) 12 All LR 595
1986 Rev Dec 125
1986 All CJ 504
1986 All WC 581

783
(1986) 2 All Rent Cas 69
1986 All CJ 259
1986 All WC 645

785
1986 All CJ 196

786
(1986) 1 All Rent Cas 60
1986 All WC 592
1986 All CJ 413
(1986) 12 All LR 524

790
(1986) 1 All Rent Cas 58
1986 All WC 136
(1986) 12 All LR 222
(1986) 1 Ren CJ 633

791
1985 All WC 963
(1986) 12 All LR 7
1986 All CJ 101

793
AIR 1986 SC 1859
(1986) 2 Cur LR 80
1986 UPLBEC 473
1986 JT 357
1986 (Supp) SCC 185
(1986) 3 Supreme 86
(1986) 53 Fac LR 749
(1986) 2 Lab LJ 298
1986 SCC (Lab) 584
(1986) 2 Serv LR 628
1986 All WC 1147
(1986) 2 ELJ (LS) 85
(1986) 2 Lab LN 800
1986 Ed Cas 210
(1986) 3 SCJ 201

796
(1986) 1 All Rent Cas 247
1986 All CJ 158
1986 All WC 466
(1986) 1 Ren CJ 520
1986 UPRJ 188

799
1986 All CJ 66

802
1986 UPLBEC 152
(1986) 2 Land LR 277

813
1986 All CJ 168
(1986) 1 All Rent Cas 61
1986 All WC 163
1986 UPRJ 217

815
1986 All CJ 136
(1986) 12 All LR 152
1986 All WC 66
(1986) 2 All Rent Cas 96

816
1986 All WC 40
1986 All CJ 303

817
1986 Rev Dec 110
1986 All WC 575
1986 All CJ 366

820
1986 All WC 433
1986 All CJ 363

821
1985 UP Cri R 334
1986 All Cri C 58
1986 All Cri R 179

All LJ — Other Journals

821 Con
1986 All WC 335
1986 All AC (Cri) 89
1986 All Cri LJ 227

823
(1986) 1 All Rent Cas 68
1986 UPRJ 211
1986 All CJ 139
1986 All WC 676

828
1985 All Cri R 413
1985 All WC 790
1985 UP Cri R 307
1986 All Cri LJ 229
1985 (Supp) All Cri C 274

830
1986 Rev Dec 319
(1986) 12 All LR (R) 115

834
1986 UPTC 42

836
(1986) 1 Crimes 330
1986 All Cri C 116
1986 All Cri R 188
1986 UP Cri R 39
1986 All Cri LJ 128
1986 All AC (Cri) 117
(1986) 2 Cri LC 365

839
1986 All CJ 148
1986 Rev Dec 134
1986 All WC 709

841
1985 All CJ 740
1986 Rev Dec 1

845
AIR 1986 All 196

(LB)
1985 SCEBRC 367
1985 All WC 1001
(1986) 12 All LR 113
1986 All CJ 1
1986 UPRJ 116

(1986) 1 All Rent Cas 1
(1986) 1 Rent CJ 565
(1986) 2 Ren CR 230

856
1985 All CJ 550
(1985) 11 All LR 746
1986 Rev Dec 338

860
1985 Rev Dec 411
1986 All CJ 95
1986 All WC 77
1986 Rev Dec 206

863
1986 All Cri C 64
1986 All Cri R 192
1986 UP Cri R 69
(1986) 2 Cri LC 377

867
AIR 1986 SC 1009
(1986) 1 APLJ (SC) 34
(1986) 2 SCC 424
(1986) 1 Cur LC 873
(1986) 2 Supreme 173
1986 Rev LR 206
(1986) 99 Mad LW 458
1986 All WC 602
1986 LS (SC) 77
(1986) 2 SCWR 1
1986 BBCJ (SC) 73
1986 All CJ 522
(1986) 2 Civ LJ 11
1986 Mah LJ 512
(1986) 2 Land LR 308
1986 Cur Civ LJ (SC) 470

All LJ	Other Journals
867	1986 MPLJ 505
Con	(1986) 2 UJ (SC) 8
869	1986 UPLBEC 175
	1986 Ed Cas 7
	1986 All WC 281
	1986 All CJ 405
871	
873	
877	1986 UPLBEC 129
	1986 All CJ 152
	1986 All WC 260
	(1986) 1 MCC 90
879	1986 UPLBEC 77
	(1986) 1 MCC 88
882	1986 All Cri R 169
	(1986) 1 Crimes 733
	1986 UP Cri R 133
	(1986) 2 Cri LC 383
884	(1986) 1 All Rent Cas 272
	1986 All WC 101
	(1986) 12 All LR 207
	1986 UPRJ 161
887	1986 All WC 637
	(1986) 2 Civ LJ 303
891	
894	1985 UPLBEC 774
	1985 All WC 1045
	(1986) 2 Civ LJ 287
895	1985 All CJ 621
899	
904	1986 Rev Dec 356
908	1986 All CJ 52
	(1986) 12 All LR (R) 17
	1986 Rev Dec 381
910	(1986) 2 All Rent Cas 447
	1985 All WC 1014
	(1986) 1 Ren CJ 158
	1986 UPRJ 65
913	1986 Rev Dec 341
916	1986 All Cri R 124
(FB)	1986 All WC 198
	1986 All Cri C 186
931	1986 All Cri R 219
	1986 All Cri C 213
938	1986 All WC 268
	1986 UPLBEC 309
	(1986) 12 All LR 295
	1986 All CJ 270
940	1986 All WC 248
	(1986) 12 All LR (R) 75
	1986 Rev Dec 209
942	(1986) 1 All Rent Cas 314
	1986 All WC 334
	1986 UPRJ 192
	1986 All CJ 317
943	(1986) 1 All Rent Cas 402
	1986 All WC 245
	(1986) 12 All LR 269
	1986 All CJ 513
946	(1986) 1 All Rent Cas 324
	1986 All CJ 236
	1986 All WC 317
	1986 UPRJ 225
947	(1986) 12 All LR (R) 57

All LJ	Other Journals
947	1986 Rev Dec 161
Con	1986 All CJ 356
949	(1986) 12 All LR (R) 82
	1986 Rev Dec 225
	1986 All WC 350
955	1986 All CJ 242
	1986 All WC 285
	1986 Rev Dec 195
957	1985 All WC 738 (2)
	1985 UPLBEC 580
	1985 All CJ 615
958	1985 Ed Cas 51
	1985 UPLBEC 639
963	1986 All CJ 110
	1986 Rev Dec 107
	1986 All WC 151
965	1986 All WC 319
	1986 Rev Dec 187
	(1986) 12 All LR (R) 67
	1986 All CJ 347
969	1985 All CJ 689
	(1986) 12 All LR 50
	1986 All WC 489
	1986 Rev Dec 363
970	1986 All CJ 56
	(1986) 12 All LR 151
	(1986) 1 All Rent Cas 23
	1986 All WC 598
972	(1986) 1 All Rent Cas 270
	(1986) 12 All LR 171
	1986 All WC 96
	1986 UPRJ 159
973	(1986) 2 All Rent Cas 9
978	(1986) 1 All Rent Cas 422
	1986 All WC 389
	(1986) 12 All LR 240
	1986 UPRJ 277
981	(1986) 1 All Rent Cas 326
	1986 All WC 356
	1986 UPRJ 269
	1986 All CJ 657
988	1985 All WC 218
	1986 Rev Dec 184
990	1986 All WC 450
	1986 Rev Dec 198
	1986 All CJ 422
994	1986 All WC 490
	(1986) 12 All LR 275
996	1986 All Cri R 418
	1986 All WC 845
	1986 All Cri C 308
	(1986) 3 Crimes 96
	1986 UP Cri R 243
999	1986 All WC 523
	1986 Rev Dec 190
	(1986) 12 All LR (R) 71
1003	1986 All Cri R 227
	1986 All Cri C 223
	1986 All Cri LJ 205
1013	
1022	1986 All WC 777
	1986 Rev Dec 415
	(1986) 12 All LR (R) 159

All LJ	Other Journals
1025	1986 Ed Cas 183
	1986 All WC 768
1027	AIR 1986 SC 1194
	(1986) 3 SCC 83
	1986 SCFBRC 315
	1986 Mah LJ 506
	1986 MPLJ 499
	(1986) 2 Ren CR 293
	1986 Jab LJ 566
	(1986) 3 Supreme 53
	(1986) 3 Bom CR 98
	(1986) 2 Cur CC 533
	1986 Mah LR 830
	(1986) 2 SCJ 617
	(1986) 2 UJ (SC) 535
	1986 MPRCJ 281
1033	(1986) 12 All LR 336
	1986 UPLBEC 671
	(1986) 1 MCC 406
1035	1986 All Cri R 383
	1986 All Cri C 329
	(1986) 2 Cri LC 393
	(1986) 12 All LR 623
1040	1986 All WC 802
	(1986) 12 All LR 412
	1986 All CJ 559
1043	1986 All CJ 597
	(1986) 12 All LR 400
	1986 UPRJ 292
	(1986) 2 All Rent Cas 106 (2)
	1986 All WC 849
	(1986) 2 Ren CR 377
1047	(1986) 1 Ren CJ 547
	1986 All WC 584
	(1986) 12 All LR 324
	(1986) 2 All Rent Cas 121
	1986 All CJ 486
1051	1986 All WC 695
	1986 All CJ 426
	(1986) 2 All Rent Cas 132
	1986 UPRJ 393
	(1986) 2 Ren CJ 527
1056	(1986) 1 All Rent Cas 409
	1986 All WC 454
	1986 All CJ 383
	(1986) 12 All LR 385
1061	AIR 1986 SC 1889
	(1986) 3 SCC 699
	1986 JT 90
	1986 Rev Dec 344
	1986 All WC 1006
	(1986) 12 All LR 121
	(1986) 2 Arbi LR 234
	(1986) 3 SCJ 373
1067	AIR 1986 SC 1895
	(1986) 3 SCC 564
	1986 JT 57
	1986 All WC 930
	(1986) 12 All LR 464
	(1986) 90 Pun LR 509
	(1986) 2 UJ (SC) 601
	(1986) 3 SCJ 350
1068	1986 UPLBEC 302
	(1986) 2 Land LR 572
1073	1986 Rev Dec 268
1078	(1986) 1 All Rent Cas 303

All LJ — Other Journals

1078 1986 All WC 297
Con (1986) 1 Cur CC 1051
(1986) 2 Civ LJ 452
1079 (1986) 2 All Rent Cas 101
1986 All WC 723
1986 All CJ 451
(1986) 12 All LR 434
(1986) 2 Rent CR 285
(1986) 2 Civ LJ 44
1986 UPRJ 423
1083 (1986) 12 All LR (R) 59
1986 Rev Dec 164
1986 All CJ 271
1986 All WC 835
1085 1986 All CJ 228
1986 Rev Dec 140
1088
1089 1986 All CJ 146
(1986) 1 All Rent Cas 364
1986 All WC 338
(1986) 1 Rent CJ 456
1986 UPRJ 170
1091 (1986) 12 All LR 329
(1987) 12 All LR (R) 166
1986 Rev Dec 422
1093 1986 All Cri C 140
1986 All WC 148
(1986) 1 Cur CC 860
1986 All CJ 277
1095 1986 All CJ 233
1986 All WC 460
(1986) 12 All LR 347
(1986) 2 Cur CC 795
1096 1986 All WC 398
1986 All Cri R 250
1986 All Cri C 293
1986 UP Cri R 197 (2)
(1986) 2 Cri LC 522
1986 All AC (Cri) 239
1102 1986 All CJ 230
1986 All WC 266
(1986) 2 Land LR 392
1103 (1986) 12 All LR 163
1986 All WC 415
1986 All CJ 395
(1986) 2 MCC 10
1104 1985 All CJ 587
1108 1986 All CJ 98
1986 All WC 349
(1986) 1 Acc 790
(1986) 2 TAC 306
1986 ACJ 906
1111 1986 Ed Cas 187
1117 (1986) 12 All LR 311
(1986) 2 MCC 19
1122 1986 UPLBEC 358
(1986) 12 All LR 405
1986 All WC 743
(1986) 2 MCC 25
1124 1986 All WC 865
1130 1986 All WC 441
1986 All CJ 463
(1986) 12 All LR 646
1135 (1986) 2 All Rent Cas 17

All LJ — Other Journals

1136 (1986) 12 All LR 405
Con 1986 UPRJ 249
1986 All WC 734
1986 All CJ 487
(1986) 2 Rent CJ 353
1138 1986 Ed Cas 271
1984 All WC (Sup) 776
1142 1986 All CJ 133
1986 All WC 145
1986 UPLBEC 263
1145 1986 All WC 771
1986 All CJ 460
1986 UPLBEC 429
1986 Rev Dec 412
(1986) 12 All LR (R) 156
1146
1150 (1986) 12 All LR 474
1986 All CJ 532
(1986) 12 All LR (R) 164
1986 Rev Dec 420
1156 1986 UPLBEC 398
1986 All Cri R 425
1986 All WC 871
(1986) 3 Crimes 75
1986 Ll Cri R 213
1155 1985 All CJ 730
1986 UPLBEC 72
(1986) 12 All LR 140
1986 All WC 43
1157 1986 All CJ 776
1161 1986 All WC 413
1986 UPLBEC 266
1986 All CJ 414
1163 1986 All Cri C 260
1986 All Cri R 441
(1986) 3 Crimes 123
1168 AIR 1986 SC 1444
(1986) 99 Mad LW 375
(1986) 1 APLJ (SC) 42
ILR 1986 Kant 2069
1986 Writ LR 232
(1986) 3 SCC 385
(1986) 1 SCWR 247
(1986) 2 Cur CC 563
1986 SCFBRC 1
(1986) 2 Ren CR 328
(1986) 3 Supreme 143
(1986) 2 Rent LR 217
1966 MPRCJ 221
(1986) 2 SCJ 499
(1986) 2 UJ (SC) 530
1172 (1986) 1 Crimes 124
1966 All Cri C 33
1175 1986 All CJ 455
1986 Rev Dec 429
(1986) 12 All LR (R) 173
1177 1986 All Cri R 429
1986 All WC 582
1986 UP Cri R 259
(1986) 3 Crimes 199
1986 All Cri C 554
1182 1986 All CJ 244
1986 All WC 540
(1986) 2 Cur CC 267

All LJ — Other Journals

1186 1986 All Cri R 141
1986 All Cri C 139
1986 All WC 115
1986 UP Cri R 21
1986 All AC (Cri) 30
1986 All Cri LJ 140
1187 (1986) 1 All Rent Cas 384
1986 UPRJ 227
(1986) 12 All LR 63
1986 All WC 1257
1193 1986 All Cri R 15
1986 All WC 469
1986 UP Cri R 67
1985 (Supp) All Cri C 355
1986 All Cri C 355
1194 1986 All WC 787
1986 Rev Dec 2 4
1986 All CJ 477
1196 (1986) 2 Cri LC 560
1985 (Supp) All Cri C 303 (1)
1197 1986 All WC 775
1986 All CJ 449
1986 Rev Dec 266
1199 1986 All Cri R 74
1986 All Cri C 137
1986 All WC 150
(1986) 2 Hindu LR 112
1986 UP Cri R 187
1200 (1986) 1 All Rent Cas 395
1986 UPRJ 234
1986 All CJ 252
(1986) 12 All LR 317
1986 All WC 925
1203 1986 All CJ 169
(1986) 12 All LR 427
1205
1211 1986 All Cri R 187
(1986) 12 All LR 154
1986 UP Cri R 29
1986 All Cri LJ 142
(1986) 2 Crimes 411
1985 (Supp) All Cri C 409
1213 (1986) 12 All LR 450
1220 1986 All Cri R 457
1986 All WC 935
1986 All Cri C 399
(1986) 3 Crimes 446
1227
1232 1986 Rev Dec 415
1986 All CJ 753
1235 1986 LJ 192
1986 All Cri R 165
1986 LER 266
(1986) 1 TAC 264
1986 All Cri C 215
(1986) 12 All LR 456
(1986) 2 Cri LC 610
1236 1985 All WC 543
1985 All Cri R 193
1985 All Cri C 298
1985 UP Cri R 259
1239 1986 All CJ 471
1241 1986 All Cri C 267
1986 All Cri R 439
(1986) 2 Crimes 119
1986 UP Cri R 241

All LJ	Other Journals
1243	1986 Rev Dec 292
	1986 All CJ 545
	1986 All WC 1256
1244	1986 All CJ 201
	1986 All WC 301
	(1986) 12 All LR 357
1248	1986 Rev Dec 311
1251	(1986) 2 Ren CJ 325
	(1986) 2 All Rent Cas 376
1253	1986 All Cri C 344
	1986 All Cri R 495
	1986 All WC 992
	(1986) 12 All LR 603
	1986 UP Cri R 267
	(1986) 2 Cri LC 669
1256	1986 All WC 928
	1986 All Cri C 355
	1986 UP Cri R 239
	1986 All Cri R 533
1257	1986 Rev Dec 301
	1986 All WC 921
	(1986) 12 All LR (R) 11
1258	1986 All WC 493
	1986 All Cri R 291
	1986 UP Cri R 143
	1986 All Cri C 277
1261	(1986) 1 All Rent Cas 390
	1986 All CJ 312
1264	
1270	1986 All WC 333
	(1986) 12 All LR (R) 61
	1986 Rev Dec 166
	1986 All CJ 352
1274	1986 All WC 919
	1986 Rev Dec 306
	1986 All CJ 550
1276	1986 Rev Dec 332
	1986 All CJ 646
	1986 All WC 1224
1281	(1986) 2 All Rent Cas 53
	1986 All CJ 419
	1986 All WC 729
	1986 UPRJ 320
	(1986) 2 Ren CJ 563
1284	1986 All WC 477
	1986 All Cri R 282
	1986 UP Cri R 111
	(1986) 2 Crimes 219
	1986 All Cri C 234
1288	
1294	1986 UPLBEC 405
	1986 Ed Cas 177
1298	1986 Rev Dec 302
	1986 All CJ 515
	1986 All WC 1248
1302	1986 All WC 761
	(1986) 12 All LR (R) 104
	1986 Rev Dec 263
	1986 All LJ 502
1303	1986 All WC 887
	(1986) 12 All LR 493
	(1986) 2 All Rent Cas 305

All LJ	Other Journals
1305	(1986) 2 Ren CR 462
Con	1986 All CJ 745
1313	1986 Ed Cas 244
1316	(1986) 12 All LR 477
	1986 All CJ 542
1319	1986 All Cri C 386
	1986 UP Cri R 263
	1986 All CJ R 606
	1986 All WC 1150
	1986 EFR 572
1321	
1329	
1332	1986 All Cri R 271
	1986 UP Cri R 140
	1986 All Cri C 288
	(1986) 2 Cri LC 673
1335	1986 All WC 826
	1986 Rev Dec 276
	1986 All CJ 546
1339	(1986) 12 All LR 331
	1986 All WC 1000
	(1986) 2 TAC 285
	1986 All CJ 624
1341	1986 All Cri R 416
	1986 All Cri C 247
	1986 All WC 838
	(1986) 3 Crimes 40 (2)
	(1986) 12 All LR 459
	1986 UP Cri R 250 (2)
1342	1986 All CJ 172
	(1986) 12 All LR 159
	(1986) 1 Hindu LR 468
	1986 All WC 656
1346	(1986) 12 All LR 371
	1986 UPLBEC 555
1353	(1986) 1 DMC 433
	(1986) 1 Hindu LR 604
	1986 All WC 781
1358	
1365	1986 All WC 168
	1986 All CJ 286
1366	(1986) 1 DMC 54
	(1986) 12 All LR 48
	1986 All CJ 37
	(1986) 1 Hindu LR 327
	1986 All WC 8
1368	AIR 1986 SC 1017
	(1986) 12 All LR 248
	(1986) 2 Cur CC 703
	(1986) 2 LU (SC) 282
	(1986) 3 Supreme 287
	1986 IJR 356
1369	AIR 1986 SC 1773
	1986 Cri LJ 1736
	1986 SCC (Cri) 337
	(1986) 3 SCC 596 & 632
	1986 JT 53 & 136
	1986 Cri LR (SC) 359
	1986 SCC (Cri) 352
	1986 East Cri C 686 & 726
	1986 BBCJ (SC) 116
	1986 Cal Cri LR (SC) 139 & 155

All LJ	Other Journals
1369	1986 Cur Cri J (SC)
Con	249
	1986 SC Cri R 314
	1986 Cri LR (SC) 405
	(1986) 3 SCJ 332
1376	1986 All WC 975
(FB)	(1986) 12 All LR 547
	1986 UPLBEC 617
	1986 All CJ 684
1383	(1986) 12 All LR 504
	1986 Ed Cas 266
1383	1986 All Cri R 633
	1986 All CJ 612
	1986 All Cri C 488
	1986 All WC 1199
	1986 UPLBEC 678
1390	1986 Rev Dec 374
	1986 All CJ 664
1393	(1986) 2 All Rent Cas 342
	1986 All WC 1013
	(1986) 12 All LR 612
1401	1986 All Cri R 617
	1986 All Cri C 490
	1986 UP Cri R 297
1406	
1410	1987 All WC 10
1413	1986 All CJ 626
1414	1986 All WC 432
	1986 UPLBEC 255
	1986 Ed Cas 39
	1986 All CJ 412
1415	(1986) 2 All Rent Cas 324
	1986 All CJ 787
1422	(1986) 12 All LR 620
	1986 All WC 1159
1425	1986 All WC 701
	1986 All CJ 417
	1986 Rev Dec 428
	(1986) 12 All LR (R) 172
1426	1986 All WC 376
	(1986) 1 All Rent Cas 469
	1986 All CJ 307
	(1986) 12 All LR 370
	1986 UPRJ 280
1427	1986 All Cri R 163
	1986 All WC 327
	(1986) 2 Crimes 47
	1986 All Cri C 201
	1986 UP Cri R 106
	1986 All Cri LJ 259
1428	(1986) 2 All Rent Cas 297
	1986 All CJ 563
	(1986) 12 All LR 668
1433	1986 All Cri C 270
	1986 All Cri R 493
	(1986) 3 Crimes 83
	1986 UP Cri R 224
1435	1986 Rev Dec 298
	(1986) 12 All LR (R) 107
	1986 All CJ 554
	1987 All WC 69

All LJ	Other Journals
1438	1986 All Cri R 622
	1986 All Cri C 505
	1986 UP Cri R 278
	(1986) 12 All LR 733
1441	1986 All WC 1003
	1986 All CJ 599
	1986 All Cri R 631
	1986 All Cri C 504
	1986 UP Cri R [illegible]
1442	1986 All Cri C 480
	(1986) 3 Crimes 444
	1986 All WC 1014
	1986 All Cri R 614
	1986 All CJ 639
	1986 UP Cri R 275
1444	1986 Rev Dec 296
	1986 All CJ 589
1445	1985 All WC 573
	1986 UPLBLC 495
	1985 All CJ 469
1446	
1451	1986 All CJ 619
1453	1986 All Cri C 371
	1986 All Cri R 552
	1986 All WC 1002
	1986 UP Cri R 270
	1986 All Cri C 552
1456	1986 All WC 1004
	1986 Rev Dec 268
	1986 UPLBLJ C 617
	1985 All CJ 617

All LJ	Other Journals
1457	1986 All CJ 643
	1986 All Cri C 542
	(1986) 12 All LR (R) 146
	1986 Rev Dec 401
	(1987) 1 Cur CC 66
1459	1986 UPLBLC 624
	(1986) 12 All LR 568
	1986 All CJ 631
	1986 All WC 1253
1460	
1447	
1483	1986 All CJ 532
1484	1986 UPLBLC 626
	1985 All CJ 772
1485	1986 Ed Cas 235
1486	
1487	
1499	1986 Rev Dec 390
	1986 All WC 1185
	(1986) 12 All LR (R) 138
	1986 All CJ 691
1504	1986 UP Cri R 151
	1986 All Cri R 411
	1986 All Cri C 246
	1986 All WC 825
	(1986) 12 All LR 459
1505	(1986) 3 Crimes 270
	1986 All Cri C 476
	1986 All Cri R 609
1509	AIR 1987 SC 22

All LJ	Other Journals
1509 Con	(1987) 1 SCC 92
	1986 JT 778
	(1986) 12 All LR 660
	1986 All WC 1253
	(1986) 4 Supreme 144
	1987 NCFBLC 41
	(1987) 1 All Rent Cas 6
1514	1986 Rev Dec 309
	1986 All CJ 560
	1987 All WC 22
1515	1987 All CJ 227
	1986 All WC 410
	(1986) 12 All LR 1
1517	1986 All CJ 602
	1986 All Cri C 484
1519	(1986) 2 All Rent Cas 399
	(1986) 3 Crimes 274
	1986 All Cri R 625
	1986 All WC 1168
	1986 All Cri C 486
1522	1986 All Cri R 669
	1986 All WC 11 9
1525	1986 All Cri R 533
	1986 All Cri C 446
	1986 All WC 1076
1526	1986 All Cri R 174
	1986 All Cri C 170
	1986 All WC 734
	1986 UP Cri R 123

Other Journals — 1986 Allahabad Law Journal

(1985) 2 ACC

ACC	All LJ
583	1986 All LJ 178

(1986) 1 ACC

ACC	All LJ
390	1986 All LJ 1108

(1987) 1 ACC

ACC	All LJ
46	1986 All LJ 1492

1985 ACJ

ACJ	All LJ
569	1986 All LJ 178

1986 ACJ

ACJ	All LJ
867	1986 All LJ 653
906	1106

1985 All AC (Cri)

All AC (Cri)	All LJ
132	1986 All LJ 133
145	267
265	81

1986 All AC (Cri)

All AC (Cri)	All LJ
1	1986 All LJ 397
	162
14	631
19	357
36	1186
45	281
60	737

1986 All AC (Cri)

All AC (Cri)	All LJ
76	1986 All LJ 68
78	336
85	607
87	574
89	821
109	946
117	816
129	245
239	1096

1985 All CJ

All CJ	All LJ
27	1986 All LJ 112
116	178
219	526
287	179
380	465
428	25
469	1445
482	93
483 (2)	391
499	21
550	656
554	160
574	460
580	5
584	423
586	204
587	1104
592	462
593	186
595	144
601	314
613	291

1985 All CJ

All CJ	All LJ
615	1986 All LJ 957
621	895
630	201
631	298
676	84
678	388
689	969
690	715
693	426
699	116
700	166
705	125
712	74
724	685
728	110
730	1135
740	841
747	475
755	157
765	109

1986 All CJ

All CJ	All LJ
1	1986 All LJ 845
13	223
24	448
29	347
37	1366
40	572
43	351
52	909
54	705
56	970
60	293

1986 All CJ

All CJ	1986 All LJ	All LJ
68		799
78		458
95		860
98		1108
101		791
103		399
108		747
110		963
115		1142
134		775
136		815
138		763
143		495
146		1089
148		859
150		645
152		877
158		796
161		927
168		813
170		565
172		1342
180		455
184		639
189		488
196		785
201		1244
209		650
219		705
227		516
228		1085
230		1102
233		436
235		1095
236		946
242		955
244		1182
248		759
252		1200
259		783
265		724
270		958
271		1053
277		1093
286		1365
300		717
303		816
304		780
307		1426
308		444
312		1261
317		942
319		740
336		747
347		965
352		1270
359		823
363		820
366		817
376		552
383		1056
395		1103
397		1043
405		869
412		1414
413		788
414		1161
417		1425
419		1281
422		990

1986 All CJ

All CJ	1986 All LJ	All LJ
425		1061
439		1115
451		1071
459		1175
463		1143
465		1130
469		1203
471		1230
477		1194
482		1135
486		1047
491		532
502		1302
513		945
515		1289
522		867
532		175
540		1314
542		1316
545		1243
546		1535
550		1274
554		1436
559		1040
563		1425
589		34
592		148
599		1441
602		1517
612		1388
617		1456
619		1451
624		1339
626		1414
631		1459
639		1442
643		1467
646		1276
657		981
664		1390
684		1376
691		1499
743		1105
755		1232
772		1484
776		1157
782		966
787		1415

1986 All Cri C

All Cri C	1986 All LJ	All LJ
298		1236
381		127
411		1
431		162
432		267

1986 (Supp) All Cri C

(Supp) All Cri C	1986 All LJ	All LJ
177		427
194		5
195		391
224		828
247		275
259		727
273		94
276		737
295		336
300 (1)		1186
355		1192

1986 (Supp) All Cri C

(Supp) All Cri C	1986 All LJ	All LJ
395		415
398		47
403		1415
407		783
434		245
446		175

1986 All Cri C

All Cri C	1986 All LJ	All LJ
1		357
7		285
16		245
29		607
35		1177
42		81
58		521
64		63
67		574
70		81
72		300
80		47
97		675
116		836
119		580
139		135
143		281
144		643
149		1093
153		679
157		1159
170		1235
173		722
178		774
186		916
201		1427
215		931
223		1003
234		175
239		470
245		1235
246		1504
247		1341
260		1163
265		29
267		1241
270		1433
277		258
279		729
280		308
288		1337
293		1096
306		975
329		10
344		254
350		485
356		653
360		651
371		1453
385		1276
386		1353
394		41
399		1230
432		75
446		1528
476		1305
480		1442
484		1517
486		1519
488		1388
490		1408
504		1441

1986 All Cri C

All Cri C		All LJ
505	1986 All LJ	1438
542		1457
552		1453
554		1177
558		115

1985 All Cri LJ

All Cri LJ		All LJ
264	1986 All LJ	267
271		91
350		1
357		265

1986 All Cri LJ

All Cri LJ		All LJ
14	1986 All LJ	162
16		175
50		950
62		693
80		651
114		293
128		836
135		6
140		1186
142		1211
144		737
149		357
163		328
172		305
205		1003
227		821
229		828
259		1427
261		722

(1986) 1 All India Cri LR

All Cri LR		All LJ
584	1986 All LJ	675
601		651

1984 All Cri R

All Cri R		All LJ
118	1986 All LJ	328

1985 All Cri R

All Cri R		All LJ
323	1986 All LJ	1236
413		978
440		175
445		81
448		737
479		3
490		41
510		139
532		162
534		357

1986 All Cri R

All Cri R		All LJ
1	1986 All LJ	282
8		607
36		300
50		336
63		675
67		643
70		179
96		1149
111		29

1986 All Cri R

All Cri R		All LJ
124	1986 All LJ	916
141		1186
143		550
153		281
157		1211
160		267
163		1427
168		1235
169		882
172		595
174		1535
176		683
179		821
181		346
183		1192
186		574
188		836
192		863
208		719
211		245
219		931
227		1003
242		308
247		722
260		1096
268		617
271		1332
282		1284
291		1258
294		768
299		470
318		727
345		774
349		275
355		397
383		1035
413		1504
416		1341
418		997
425		1154
429		1177
439		1241
441		1163
457		1220
493		1433
495		1253
517		1
533		1256
539		1528
552		1451
606		1319
609		1505
614		1442
617		1401
622		1438
629		1519
631		1441
633		1388
669		1522

(1984) 10 All LR

All LR		All LJ
223	1986 All LJ	328
690		112

(1985) 11 All LR

All LR		All LJ
171	1986 All LJ	178
220		347
262		467
380		172

(1985) 11 All LR

All LR		All LJ
569	1986 All LJ	393
625		186
706		33
723		166
733		71
737		460
746		836
764		701
769		84
781		160
787		144
788		323
789		167
794		116
796		126
800		288
805		451

(1985) 11 All LR (R)

All LR (R)		All LJ
83	1986 All LJ	578
88		467

(1986) 12 All LR

All LR		All LJ
1	1986 All LJ	354
4		310
7		791
37		76
48		1366
50		969
59		109
62		475
67		423
73		554
77		547
93		335
113		315
125		347
131		669
140		1155
148		572
151		970
152		815
154		675
159		1342
163		1103
165		271
171		972
172		192
184		1211
191		671
191		752
202		616
207		884
212		747
216		724
222		790
236		705
240		978
245		740
248		1368
252		318
269		943
275		994
295		938
297		768
298		764
30		488
311		157

(1986) 12 All LR

All LR		All LJ
317	1986 All LJ	1200
320		1516
324		1047
329		1091
336		1033
347		1095
357		1244
363		1187
370		1426
371		1346
385		1056
400		1043
405		1122
408		1135
412		1040
434		1079
450		308
456		1235
458		1504
459		1341
464		1067
467		1203
474		1152
477		1316
480		1213
495		1305
503		178
504		1383
521		867
524		788
531		1339
547		1376
568		1459
570		755
591		597
595		778
603		1253
612		1395
620		1422
623		1036
644		651
646		1130
660		1509
668		1428
735		1438

(1986) 12 All LR (R)

All LR (R)		All LJ
17	1986 All LJ	908
33		399
44		418
52		647
57		947
59		1083
61		1270
67		965
71		999
75		940
82		949
99		576
104		1302
107		1435
111		1257
112		182
118		830
121		1061
138		1499
146		1457
156		1143
159		1022
164		1152
166		1091

(1986) 12 All LR (R)

All LR (R)		All LJ
172	1986 All LJ	1425
175		1176

(1987) 13 All LR

All LR		All LJ
44	1986 All LJ	1517

(1987) 13 All LR (R)

All LR (R)		All LJ
20	1986 All LJ	1264

(1984) 2 All Rent Cas

All RC		All LJ
422	1986 All LJ	618

(1985) 1 All Rent Cas

All RC		All LJ
124	1986 All LJ	342
319		172

(1985) 2 All Rent Cas

All RC		All LJ
1	1986 All LJ	62
236		650
243		74
263 (1)		83
298		393
356 (2)		204
385		451
415		233
419		354
440		86
447		910
455		240
465		288
471		125
475		116
478		109
483	"	310
486		462
490		423
500		306
526		438
535		554
550		84

(1986) 1 All Rent Cas

All RC		All LJ
1	1986 All LJ	865
15	"	347
23	"	970
25	"	763
27	"	708
30	"	495
40	"	572
46		732
49	"	363
58	"	790
60		788
61		813
63		444
68		823
74	"	689
82		436
98		629
135	"	432
172		650
247	"	796

(1986) 1 All Rent Cas

All LJ RC		All LJ
250	1986 All LJ	778
254		515
267		745
270		972
272		864
305		1078
314		942
324		946
326		981
364		1089
384		1187
390		1260
398		1200
402		943
409		1056
422		978
432		755
469		1426

(1986) 2 All Rent Cas

All RC		All LJ
1	1986 All LJ	764
6		740
9		973
17		1135
53		1281
80		271
89		783
96		815
101		1079
106 (2)	"	1043
121		1047
132		1051
297		1428
305		1305
334		1415
342		1395
376		1251
399		1319
419		448

(1987) 1 All Rent Cas

All RC		All LJ
6	1986 All LJ	1509

1985 All Tax J

All Tax J		All LJ
613	1986 All LJ	335

1986 All Tax J

All Tax J		All LJ
78	1986 All LJ	252
169		291

1987 All Tax J

All Tax J		All LJ
72	1986 All LJ	252

1984 All WC

All WC		All LJ
145	1986 All LJ	328
600		359
715		112
759		618
1071		205

1984 All WC (Supp)

All WC (Supp)		All LJ
699	1986 All LJ	179
726		1138

1986 All WC

All WC		All LJ
221	1986 All LJ	467
373	" "	427
428		172
543		1236
573		1445
606		8
637		25
695		186
738 (1)		83
738 (2)		957
740		650
769		453
772		86
778		21
790		828
794		465
832		163
841		160
845		704
847		117
850		74
868		175
872		144
880		81
883		462
884		737
890		41
903		84
912		335
918		3
935		109
948		425
960		310
963		791
965		423
967		125
1001		845
1014		910
1017		162
1024		233
1032		340
1035		607
1037		578
1041		282
1045		894

1986 All WC

All WC		All LJ
1	1986 All LJ	475
4		316
8		1366
10		582
16		323
17		257
40		816
41		500
48		705
54		1153
66		815
71		609
74		643
77		860
81		236
89		745
96		972
101		884
104		351
108		369
115		742

1986 All WC

All WC		All LJ
118	1986 All LJ	1186
120		458
133		88
139		675
143		673
145		1142
148		1093
150		1199
151		963
155		763
163		813
168		1165
181		271
186		790
198		916
216		732
218		988
222		724
230		347
245		943
248		940
250		595
254		1535
257		968
260		877
266		1102
268		9 S
270		719
273		570
275		550
281		869
285		955
287		749
297		1078
301		1244
317		946
319		965
323		1270
327		1427
329		428
334		942
335		821
338		1089
340		346
349		1103
354		574
356		981
364		683
366		554
370		717
376		1426
381		318
389		978
393		547
398		1096
404		769
410		1516
413		1161
415		1103
425		740
427		708
432		1414
433		820
441		1130
450		996
454		1056
460		1095
466		796
469		1192
471		778
474		752
477		1284

1986 All WC

All WC		All LJ
483	1986 All LJ	650
489		969
490		994
493		1258
495		755
505		535
513		388
517		594
523		999
540		1182
552		616
567		774
578		617
581		780
584		1047
592		758
594		759
598		970
600		572
602		867
612		470
617		727
625		576
637		887
645		753
656		1342
666		643
668		397
676		9
686		620
693		1051
701		1425
709		839
723		1079
729		1281
734		1135
743		112–
761		1302
768		1025
771		**1343**
775		1197
777		1022
781		1353
787		1194
798		184
807		1040
825		1504
826		1335
835		1083
838		1341
845		996
849		1043
865		1124
873		1154
882		1178
887		1305
919		1274
921		1257
925		1260
928		1286
930		1067
932		1220
950		949
975		1376
992		1263
1000		1339
1003		1441
1004		1456
1006		1061
1015		1395
1074		**1442**
1076		**1528**
1092		**1453**

1986 All WC

All WC		All LJ
1147	1986 All LJ	793
1150		1319
1159		1422
1168		1519
1179		1522
1185		1499
1199		1388
1224		1276
1229		1509
1248		1298
1253		1459
1256		1243
1257		1187

1987 All WC

All WC		All LJ
10	1986 All LJ	1410
32		1514
69		1435
100		1444

(1986) 1 APLJ (SC)

APLJ (SC)		All LJ
34	1986 All LJ	867
36		653
42		1165

(1985) 1 Andh LT

Andh LT		All LJ
305	1986 All LJ	178

(1986) 2 Arbi LR

Arbi LR		All LJ
14	1986 All LJ	621
274	" "	1061

1986 Bank J

Bank. J		All LJ
434	1986 All LJ	621

1986 BBCJ (SC)

BBCJ (SC)		All LJ
35	1986 All LJ	271
46		774
73		867
116		1369

1986 BLJR

BLJR		All LJ
394	1986 All LJ	774
401		281

(1986) 3 Bom CR

Bom CR		All LJ
98	1986 All LJ	1027

1986 Cal Cri LR (SC)

Cal Cri LR (SC)		All LJ
81	1986 All LJ	768
85		774
139 & 155		1369

1986 Chand Cri C (SC)

Chand Cri C (SC)		All LJ
31	1986 All LJ	651
41		162
43		653
54		281

(1986) 1 Chand LR (Cri)

Chand LR (Cri)		All LJ
141	1986 All LJ	175
519		651
565		162
639		397

(1986) 2 Chand LR (Cri)

Chand LR (Cri)		All LJ
213	1986 All LJ	281
434		774

(1985) 1 Civ LJ

Civ LJ		All LJ
498	1986 All LJ	178

(1986) 1 Civ LJ

Civ LJ		All LJ
387	1986 All LJ	8
428		257
595		354
624		369
630		146
652		211
673		359

(1986) 2 Civ LJ

Civ LJ		All LJ
11	1986 All LJ	867
13		488
39		467
165		582
172		527
180		532
287		894
403		887
443		1079
452		1078
556		1155
560		1239
622		1175
651		1281
669		1316

(1987) 1 Civ LJ

Civ LJ		All LJ
69	1986 All LJ	1251

(1986) 59 Com Cas

Com Cas		All LJ
861	1986 All LJ	621

(1986) 1 Com LJ

Com LJ		All LJ
198	1986 All LJ	254
297		621

(1985) 1 Crimes

Crimes		All LJ
657 (2)	1986 All LJ	1[illegible]

(1985) 2 Crimes

Crimes		All LJ
708	1986 All LJ	275
729		651
861		162
881		94
998		357

(1986) 1 Crimes

Crimes		All LJ
50	1986 All LJ	282
124		1172
151		265
214		312
259		120
330		856
333		574
334		415
337		346
503		498
695		53
728		46
733		892

(1986) 2 Crimes

Crimes		All LJ
40	1986 All LJ	774
47		1427
110		727
121		719
143		281
171		683
219		1284
411		1211
465		397
649		722
670		768

(1986) 3 Crimes

Crimes		All LJ
40 (2)	1986 All LJ	1341
78		1154
85		1433
96		996
119		1241
123		1163
199		1177
270		1505
274		1519
444		1442
446		1220

(1987) 1 Crimes

Crimes		All LJ
85	1986 All LJ	556

1985 Cri App R (SC)

Cri App R (SC)		All LJ
241	1986 All LJ	175
253	" "	275
330		651
355		162

1986 Cri App R (SC)

Cri App R (SC)		All LJ
9	1986 All LJ	397
12		653
35		281
80		768
85		774
223		369

(1986) 1 Cri LC

Cri LC		All LJ
60	1986 All LJ	651
290		415
350		281
356		120
366		81
503		397
537		336
554		46
669		300

(1986) 2 Cri LC

Cri LC		All LJ
1	1986 All LJ	245
52		308
63		282
108		265
161		267
365		836
377		863
383		882
393		1035
522		1096
560		1196
610		1235
669		1253
673		1332

1985 Cri LR (SC)

Cri LR (SC)		All LJ
393	1986 All LJ	175
437		275
482		162
547		651

1986 Cri LR (SC)

Cri LR (SC)		All LJ
66	1986 All LJ	653
183		768
188		774
212		621
317		281
333		397
359		1369
405		1369

(1985) 2 Cur CC

Cur CC		All LJ
753	1986 All LJ	71

(1986) 1 Cur CC

Cur CC		All LJ
231	1986 All LJ	84
250	" "	254
254		252
462		160
522		215

(1986) 1 Cur CC

Cur CC		All LJ
602	1986 All LJ	485
708		659
711		257
860		1099
873		867
899		792
1021		621
1051		1078

(1986) 2 Cur CC

Cur CC		All LJ
191	1986 All LJ	532
267		1182
533		1027
541		677
563		1168
574		96
618		527
704		1369
775		764
795		1095

(1987) 1 Cur CC

Cur CC		All LJ
66	1986 All LJ	1457

1985 Cur Civ LJ (SC)

CC LJ (SC)		All LJ
707	1986 All LJ	285
768	"	178

1986 Cur Civ LJ (SC)

CC LJ (SC)		All LJ
124	1986 All LJ	659
189	"	271
217		257
470		867

1985 Cur Cri J (SC)

Cur Cri J (SC)		All LJ
437	1986 All LJ	175
448		275
479		651
486		162
516		653

1986 Cur Cri J (SC)

Cur Cri J (SC)		All LJ
89	1986 All LJ	281
110	"	397
148		768
165		774
249		1369

(1985) 1 Cur LJ (C & Cri)

Cur LJ (C & Cri)		All LJ
652	1986 All LJ	178

(1986) 1 Cur LJ (C & Cri)

Cur LJ (C & Cri)		All LJ
615	1986 All LJ	651

(1986) 2 Cur LJ (C & Cri)

Cur LJ (C & Cri)		All LJ
66	1986 All LJ	768
628	"	673

(1986) 2 Cur LR

Cur LR		All LJ
90	1986 All LJ	793

(1986) 1 DMC

DMC		All LJ
54	1986 All LJ	1366
438		1353

(1986) 2 DMC

DMC		All LJ
1	1986 All LJ	281

1986 East Cri C

East Cri C		All LJ
67	1986 All LJ	651
96		275
150		162
300		281
384		768
570		774
686		1369
727		1369

(1986) 8 LCC

LCC		All LJ
147	1986 All LJ	252

(1986) 7 ECR

LCR		All LJ
266	1986 All LJ	252

1984 Ed Cas

Ed Cas		All LJ
212	1986 All LJ	359
331		204

1985 Ed Cas

Ed Cas		All LJ
51	1986 All LJ	958
62		270
221		1135
288		323
327		88
340	"	236

1986 Ed Cas

Ed Cas		All LJ
7	1986 All LJ	863
12		749
17		428
23		986
39		1414
136		184
177		1294
183		1025
187		1111
231		107
235		1455
244		1337
249		155
263		296
266		1363
310		793

1985 EFR

EFR		All LJ
569	1986 All LJ	1

1986 EFR

EFR		All LJ
140	1986 All LJ	643
194		595
266		1235
467	"	3
572	"	1319

1987 EFR

EFR		All LJ
107	1986 All LJ	820

(1986) 5 ELJ (LS)

ELJ (LS)		All LJ
85	1986 All LJ	793

(1986) 23 ELT

ELT		All LJ
5	1986 All LJ	252

(1985) 2 FAC

FAC		All LJ
32	1986 All LJ	1

(1986) 1 FAC

FAC		All LJ
264	1986 All LJ	1235
273		595

(1984) 49 Fac LR

Fac LR		All LJ
399	1986 All LJ	285

(1986) 53 Fac LR

Fac LR		All LJ
349	1986 All LJ	793

1985 FAJ

FAJ		All LJ
348	1986 All LJ	1

1986 FAJ

FAJ		All LJ
182A	1986 All LJ	1235

1986 (27) 1 Guj LR

Guj LR		All LJ
600	1986 All LJ	659

1985 Har Rent R

Har Rent R		All LJ
269	1986 All LJ	178
643	"	84

1986 Har Rent R

Har Rent R		All LJ
186	1986 All LJ	392

(1986) 1 Hindu LR

Hindu LR		All LJ
327	1986 All LJ	1366
464		675
468		1342
604		1353

(1986) 2 Hindu LR

Hindu LR		All LJ
112	1986 All LJ	1199

1985 IJR

IJR		All LJ
70	1986 All LJ	285
269	"	175

1986 IJR

IJR		All LJ
35	1986 All LJ	84
94		659
117		252
56		1368
365		1067

1986 Jab LJ

Jab LJ		All LJ
566	1986 All LJ	107

1986 JT

JT		All LJ
53	1986 All LJ	1369
57		1067
90		1061
136		1369
357		793
778		1509

ILR 1986 Kant

ILR Kant		All LJ
2039	1986 All LJ	1168

(1986) 2 Lab LJ

Lab LJ		All LJ
29	1986 All LJ	793

(1986) 1 Lab LN

Lab LN		All LJ
699	1986 All LJ	285

(1986) 2 Lab LN

Lab LN		All LJ
38	1986 All LJ	652
800		793

(1985) 1 Land LR

Land LR		All LJ
592	1986 All LJ	178

(1986) 1 Land LR

Land LR		All LJ
286	1986 All LJ	70
315		71
367		257
494		392
518		659
629		392

(1986) 2 Land LR

Land LR		All LJ
277	1986 All LJ	802
308		867
392		1102
572		1068

(1987) 1 Land LR

Land LR		All LJ
40	1986 All LJ	1244
211	"	1040

(1985) 2 LS (SC)

LS (SC)		All LJ
35	1986 All LJ	175

1986 LS (SC)

LS (SC)		All LJ
40	1986 All LJ	162
61		281
75		768
77		867

1986 MPLJ

MPLJ		All LJ
499	1986 All LJ	1027
505	"	867

1986 MPRCJ

MPRCJ		All LJ
1	1986 All LJ	84
155		740
194		761
221		1168
281		1027

1987 MPRCJ

MPRCJ		All LJ
1	1986 All LJ	1509

1985 Mad LJ (Cri)

Mad LJ (Cri)		All LJ
478	1986 All LJ	175

1986 Mad LJ (Cri)

Mad LJ (Cri)		All LJ
32	1986 All LJ	653

(1986) 99 Mad LW

Mad LW		All LJ
325	1986 All LJ	1168
458		861
481		271

1986 Mad LW (Cri)

Mad LW (Cri)		All LJ
4	1986 All LJ	651
170		651
440		1369

1986 Mah LJ

Mah LJ		All LJ
506	1986 All LJ	1027
512		867

1986 Mah LR

Mah LR		All LJ
830	1986 All LJ	1027

1986 Marriage LJ

Matri LJ		All LJ
181	1986 All LJ	281

1986 Mat LR

Mat LR		All LJ
121	1986 All LJ	281

(1986) 1 MCC

MCC		All LJ
21	1986 All LJ	475
88		879
90		877
406	"	1033

(1986) 2 MCC

MCC		All LJ
10	1986 All LJ	1103
19		1117
25		1122

1986 Pat LJR (SC)

Pat LJR (SC)		All LJ
11	1986 All LJ	281
17 (2)		397
33		768

1985 Pun LJ

Pun LJ		All LJ
164	1986 All LJ	178

(1986) 90 Pun LR

Pun LR		All LJ
509	1986 All LJ	1067

1985 Recent Laws

Recent Laws All LJ
1 1986 All LJ 285

(1985) 2 Rec Cri R

Rec Cri R All LJ
287 1986 All LJ 175

(1986) 1 Rec Cri R

Rec Cri R All LJ
40 1986 All LJ 651
42 162
348 653

(1986) 2 Rec Cri R

Rec Cri R All LJ
40 1986 All LJ 281
132 774
437 774

(1985) 2 Ren CJ

Ren CJ All LJ
236 1986 All LJ 393
555 84
617 650

(1986) 1 Ren CJ

Ren CJ All LJ
16 1986 All LJ 116
27 310
30 125
123 84
158 910
187 423
224 233
236 29
364 432
429 705
456 1089
475 778
520 796
547 1047
565 845
631 763
633 790
653 653
695 535

(1986) 2 Ren CJ

Ren CJ All LJ
285 1986 All LJ 1079
325 1251
377 1043
382 1135
408 764
527 1051
563 1281
681 436

(1985) 2 Ren CR

Ren CR All LJ
389 1986 All LJ 391

(1986) 1 Ren CR

Ren CR All LJ
82 1986 All LJ 84

(1986) 2 Ren CR

Ren CR All LJ
230 1986 All LJ 845
251 1027
259 116
328 1168
392 740

(1985) 2 Ren CR

Ren CR All LJ
394 1986 All LJ 764
462 1305

(1986) 1 Rent LR

Rent LR All LJ
532 1986 All LJ 705
661 423

(1986) 2 Rent LR

Rent LR All LJ
11 1986 All LJ 109
181 740
217 1168

1985 Rev Dec

Rev Dec All LJ
231 1986 All LJ 685
391 58
406 21
411 860
427 578
4 3 463
435 465
444 157
445 156
459 445
482 117
487 458

1986 Rev Dec

Rev Dec All LJ
1 1986 All LJ 841
5 340
8 188
26 293
35 388
66 104
73 399
77 369
82 251
99 418
107 963
110 817
119 769
134 839
140 1085
143 647
155 780
161 947
164 1083
166 1270
171 404
182 680
184 988
187 965
190 999
195 955
198 999
203 759
206 860
209 940
225 949
250 616
257 576
263 1302
266 1197
268 1073
274 1194
276 1335

1986 Rev Dec

Rev Dec All LJ
279 1986 All LJ 117
284 659
292 1243
296 1444
298 1435
301 1257
302 1298
306 1274
309 1514
311 1248
313 182
319 830
332 1276
338 836
341 913
344 1061
356 904
363 969
368 1456
374 1390
381 908
390 1499
401 1457
412 1143
415 1022
420 1152
422 1091
428 1425
429 1175
445 1232

1985 Rev LR

Rev LR All LJ
195 1986 All LJ 178

1986 Rev LR

Rev LR All LJ
206 1986 All LJ 867

(1986) 61 STC

STC All LJ
76 1986 All LJ 252

1986 STI (SC)

STI (SC) All LJ
99 1986 All LJ 252

(1986) 16 STL

STL All LJ
14 1986 All LJ 252

(1986) 3 Serv LJ

Serv LJ All LJ
235 1986 All LJ 662

(1985) 3 Serv LR

Serv LR All LJ
56 1986 All LJ 285

(1986) 1 Serv LR

Serv LR All LJ
36 1986 All LJ 84
699 662

(1986) 2 Serv LR

Serv LR All LJ
623 1986 All LJ 793

(1986) 1 Supreme

Supreme All LJ
24 1986 All LJ 84
35 162
74 651
80 275

(1986) 1 Supreme

Supreme All LJ
281 1986 All LJ 254
284 252
403 215
566 659
569 257
643 392

(1986) 2 Supreme

Supreme All LJ
1 1986 All LJ 774
145 621
173 867
284 662
413 281

(1986) 3 Supreme

Supreme All LJ
53 1986 All LJ 1027
61 673
86 793
141 1168
287 1368
333 764

(1986) 4 Supreme

Supreme All LJ
144 1986 All LJ 1509

(1985) 1 SCC

SCC All LJ
120 1986 All LJ 285
431 178

(1985) 3 SCC

SCC All LJ
364 1986 All LJ 393
703 175

(1985) 4 SCC

SCC All LJ
234 1986 All LJ 651
333 84
557 215
677 653

(1986) 1 SCC

SCC All LJ
23 1986 All LJ 252
26 254
351 257
398 281
566 659
615 271
650 397
685 392

(1986) 2 SCC

SCC All LJ
145 1986 All LJ 621
401 774
409 768
424 867
428 740
554 764

(1986) 3 SCC

SCC All LJ
83 1986 All LJ 1027
259 673
263 597
385 1168
564 1067
596 1369
632 1369
699 1061

(1987) 1 SCC

SCC All LJ
92 1986 All LJ 1509

1985 Supp SCC

Supp SCC All LJ
379 1985 All LJ 275
596 162

1986 Supp SCC

Supp SCC All LJ
185 1986 All LJ 793
285 662
315 625

1985 SCC (Cri)

SCC (Cri) All LJ
452 1986 All LJ 175
478 275
505 162
511 651

1986 SCC (Cri)

SCC (Cri) All LJ
47 1986 All LJ 633
60 397
72 281
166 774
174 768
337 1369
352 1369

1985 SCC (Lab)

SCC (Lab) All LJ
172 1986 All LJ 285

1986 SCC (Lab)

SCC (Lab) All LJ
584 1986 All LJ 793
644 662

1986 SCC (Tax)

SCC (Tax) All LJ
155 1986 All LJ 252

1985 SC Cri R

SC Cri R All LJ
370 1986 All LJ 275
377 175
394 162

1986 SC Cri R

SC Cri R All LJ
20 1986 All LJ 653
51 397
60 281
115 768
116 774
311 1369

1985 SCFBRC

SCFBRC All LJ
331 1986 All LJ 393
345 84
367 845

1986 SCFBRC

SCFBRC All LJ
265 1986 All LJ 764
271 740
315 1027
323 271
330 " 1168

1987 SCFBRC

SCFBRC All LJ
41 1986 All LJ 1509

(1986) 1 SCJ

SCJ All LJ
35 1986 All LJ 659
152 271
257 392
367 621
606 662

(1986) 2 SCJ

SCJ All LJ
333 1986 All LJ 764
429 1168
475 673
487 597
565 " 625
617 1027

(1986) 3 SCJ

SCJ All LJ
201 1986 All LJ 793
332 1369
350 1067
373 1061

(1985) 1 SCWR

SCWR All LJ
4 1986 All LJ 285

(1986) 1 SCWR

SCWR All LJ
97 1986 All LJ 175
133 281
137 659
219 774
242 1168

(1986) 2 SCWR

SCWR All LJ
1 1986 All LJ 867

(1985) 2 TAC

TAC All LJ
431 1986 All LJ 178

(1986) 2 TAC

TAC All LJ
285 1986 All LJ 1339
306 1108

(1987) 1 TAC

TAC All LJ
60 1986 All LJ 1339
73 1422

1986 Taxation 80 (7)

Taxation All LJ
23 1986 All LJ 252

1984 UJ (SC)

UJ (SC) All LJ
1084 1986 All LJ 285

1985 UJ (SC)

UJ (SC) All LJ
551 1986 All LJ 178
906 175

(1986) 1 UJ (SC)

UJ (SC) All LJ
28 1986 All LJ 84
121 215
138 659
142 252
152 254
224 397
226 281
287 271

(1986) 1 UJ (SC)

UJ (SC)		All LJ
380	1986 All LJ	592
458		653
468		393
504		257
742		621

(1986) 2 UJ (SC)

UJ (SC)		All LJ
1	1986 All LJ	673
8		867
63		625
184		662
282		1365
287		740
452		764
530		1168
535		1027
601		1067

(1987) 1 UJ (SC)

UJ (SC)		All LJ
23	1986 All LJ	1509

1984 UP Cri R

UP Cri R		All LJ
152	1986 All LJ	325

1985 UP Cri R

UP Cri R		All LJ
128	1986 All LJ	427
194	"	29
197	"	1
259		1236
267		41
283		3
291		94
294		357
307		828
325		346
328		574
334		821

1986 UP Cri R

UP Cri R		All LJ
1	1986 All LJ	651
21		1186
29		1211
39		836
44		722
67		1192
69		863
73		675
76		727
78		550
106		1427
107		595
111		1284
135		882
140		1332
143		1258
151		1504
164		308
183		643
185		281
187		1199
189		774
193		1535
197 (2)		1096
219		1154
224		1433
229		768

1986 UP Cri R

UP Cri R		All LJ
239	1986 All LJ	1[illegible]
241		1244
243		99[illegible]
250 (2)		1341
259		1177
263		1319
267		1293
269		1441
270		1453
275		1442
278		1439
297		1401
328		75
330		747

1987 UP Cri R

UP Cri R		All LJ
27	1986 All LJ	1514
33		1505

1984 UPLBEC

UPLBEC		All LJ
734	1986 All LJ	359
808		205

1985 UPLBEC

UPLBEC		All LJ
242	1986 All LJ	2[illegible]6
493		1445
551		270
586		957
619		958
774		984
814		373

1986 UPLBEC

UPLBEC		All LJ
22	1986 All LJ	1158
66		478
77		879
80		582
129		577
152		802
175		869
179		749
255		1434
257		747
265		1142
266		1161
292		318
302		1068
309		938
348		507
388		1122
398		1154
405		1294
429		1143
434		323
441		616
458		558
473		793
501		477
534		570
555		1346
617		1376
624		1459
626		1484
632		1456
678		1388
671		1033

1986 UPRJ

UPRJ		All LJ
1	1986 All LJ	84
12		423
17		204
30		462
35		432
41		436
61		310
65		910
70		125
90		109
93		393
115		116
116		845
132		347
138		708
141		572
156		745
159		972
161		884
170		1089
172		778
188		796
192		942
197		689
202		363
211		823
217		813
219		763
225		946
227		1187
234		1200
241		233
249		1135
256		740
269		981
277		978
280		1426
292		1043
296		764
320		1281
363		271
393		1091
417		532
423		1079

1984 UPSC

UPSC		All LJ
336	1986 All LJ	359

1985 UPSC

UPSC		All LJ
56	1986 All LJ	205
132		70

1986 UPTC

UPTC		All LJ
19	1986 All LJ	291
36		335
42		834
398		252

(1986) 19 VKN

VKN		All LJ
236	1986 All LJ	252

1986 Writ LR

Writ LR		All LJ
232	1986 All LJ	1168

THE

ALLAHABAD LAW JOURNAL

1986

1986 ALL L J 1

N N SHARMA J

Jagdish Prasad and another Petitioners v State of U P Respondent

Criminal Revn No 1377 of 1982 D/ 26 4 1985

(A) Prevention of Food Adulteration Act (37 of 1954), Ss 7 and 16 — Sale of adulterated food — Agent and master all are equally liable

It is well established that a person may be liable for a penalty by reason of his personal violation of a food law or for acts done by his agent employee or partner Agent and the master all are equally liable in cases of sale of adulterated food AIR 1961 SC 631 Ref on (Para 9)

(B) Prevention of Food Adulteration Act (37 of 1954), S 13(2 B) — Sample received by Director on 5-12 79 — Report sent on 25 2-80 i e after one month — No prejudice to parties was disclosed — Held mere non-observance of time limit for sending report was not sufficient to invalidate the report AIR 1985 SC 299 Foll (Para 14)

Cases Referred	Chronological	Paras
AIR 1985 SC 299	1984 Cri LJ 1731	14
AIR 1983 SC 303	1983 All LJ 448	14
(1982) 1 FAC 290	(1983) 85 Pun LR 36	13
1981 All LJ 1094	1981 All Cri C 279	10
AIR 1961 SC 631	1961 (1) Cri LJ 747	9

Palok Basu for Petitioners A G A for Respondent

ORDER — This revision is directed against order dt 24 7 82 recorded by Sri Jai Shanker Dubey V Additional Sessions Judge Meerut, who dismissed Criminal Appeal No 32 of 1981 and upheld the conviction of revisionists as recorded by Sri V K Gupta Judicial Magistrate on 7 1 81 in case No 1753 of 1980 under S 7/16 of Prevention of Food Adulteration Act sentencing each of them to six months R I and fine of Rs 1 000 each In default of payment of fine defaulter was further ordered to undergo three months imprisonment

2 Jagdish Prasad revisionist is father of Ram Autar The revisionists dealt in milk and curds under the style of M/s Jagdish Dairy situate in Shahgasha Mandi Mariwara Meerut

3 On 3 5 79 at 8 30 A M Chief Food Inspector Sri B K Agarwal P W 1 found Ram Autar revisionist selling Seprata curd Chief Food Inspector disclosed his identity vide service of the notice exhibit Ka 1 form No VI Ram Autar gave the name of the owner as Jagdish Prasad 600 milligrams of curd was purchased by Food Inspector for a sum of 8 90 Paisa in presence of witnesses Krishna Gopal etc vide receipt exhibit Ka 2 and memoranda form exhibit Ka 3 was drawn After sampling in accordance with rules report of public analyst exhibit Ka 4 was obtained which disclosed fat 0 50 per cent and non fatty milk solids 6 62 per cent Thus there was deficiency of 8 7 per cent in non fatty solids Necessary sanction for prosecution exhibit Ka 7 was procured by Chief Food Inspector through letter Exhibit Ka 6 The sanction was accorded by Sri B C Saxena after perusal of all the papers complaint was filed in the court vide Exhibit Ka 8 Revisionist was informed about the matter Under S 13(2) of the Prevention of Food Adulteration Act the sample was reanalysed at the request of revisionist by Director Central Food Laboratory Ghaziabad who found milk fat 0 4 per cent and milk solids of non fat 6 4 per cent and thus it was found that the sample was below the minimum prescribed standard

4 Prosecution examined Sri B K Agarwal Chief Food Inspector P W 1 who proved the aforesaid documents exhibits Ka 1 to Ka 8 and detailed the aforesaid facts

5 In his statement Ram Autar admitted the sampling and his signatures on the receipt

He further stated that he did not sit on the shop but his signatures were forcibly procured

6 Jagdish Prasad conceded that the shop belonged to him but the curd did not belong to him and he did not sell the curd

7 One Abdul Badood D W 1 was examined to testify that on the shop of revisionist he had left his curd and sample was taken from it

8 The defence was disbelieved by the courts below who upheld the prosecution version

9 On behalf of revisionists first contention raised was that Jagdish Prasad was not present at the shop at the time of sampling He did not authorise the sale of adulterated curd and so no conviction was sustainable In this connection it is significant to note that Sri B K Agarwal P W 1 testified that the shop from which sample was seized belonged to Jagdish Prasad as was given out by Ram Autar himself In his statement Jagdish Prasad admitted that the shop belonged to him although he denied that he used to deal in curd D W 1 Abdul Badood conceded that the shop belonged to Jagdish Prasad who was not present at the time of sampling Ram Autar was there He further conceded that the milk and curd were sold at the dairy Under these circumstances this finding of fact that Jagdish Prasad was the owner of the shop and Ram Autar was the salesman cannot be disturbed It is well established that a person may be liable for a penalty by reason of his personal violation of a food law or for acts done by his agent employee or partner agent and the master all are equally liable in cases of sale of adulterated food vide Sarju Prasad v State of U P AIR 1961 SC 631 So this contention is ruled out

10 The next contention was that the report of Director of Central Food Laboratory gives the number of sample as DM/3 5/79 Sample No CFI/MFS/79 80 According to report of public analyst number of this sample was CFI/MF5/79 40 vide exhibit Ka 4 Sri Sardar Akhtar Judicial Magistrate Meerut who sent the sample to Director Central Food Laboratory vide the letter dt 28 11 79 gave number of the container as JM/3 5/79 He did not certify that seal of the sample sent for comparison to the director was intact Under such circumstances the revisionists were entitled to the benefit of reasonable doubt vide Bhagwat v State of U P 1981 All Cri C 279 (1981 All LJ 1094) It appears that in that case the report of the Director made it clear that no sample seal was sent to him and he had no occasion to compare the seals on the container Thus the mandatory provision of R 4 sub cl (3) of the Rules was not complied with

11 In the instant case the report of Director dt 25 2 80 shows that the seals were intact and the parcel seals on the outer cover of the parcel tallied with the specimen impression of the court seal given on memo

12 Thus there is nothing wrong about the sample sent to Director which was found in a fit state of analysis This certificate when read along with letter dt 25 2 80 sent by Director Central Food Laboratory Ghaziabad to Sri Sardar Akhtar Munsif Magistrate Meerut showed that the sample sent to him related to the same case No 194 of 1979 It is further significant to note that such contention was never raised before learned trial Magistrate Learned Sessions Judge rightly found that there was some typing error in the number of the figure 80 instead of 40 which was explicable had such an opportunity been afforded to the Food Inspector Similarly if instead of J M D M has been noted it will not lead to the conclusion that there was something wrong in the sample sent to Director or the sample sent to Director was not the same which was seized from the shop of Jagdish Prasad Under such circumstances it is not possible to go by this discrepancy

13 The next contention was that the sample was received by Director on 5 12 79 and he submitted his report on 25 2 80 It was beyond one month as laid down in S 13 (2 B) of Prevention of Food Adulteration Act which prescribes a period of one month only for submission of such report specifying the result of the analysis This rule was held mandatory in Darshan Lal v State of Punjab (1982) 1 FAC 290

14 However this view has been departed from in Tulsi Ram v State of Madhya Pradesh AIR 1985 SC 299 which quoted with approval the test laid down in Dalchand v Municipal Corporation Bhopal AIR 1983 SC 303 as extracted below —

There are no ready tests or invariable formula to determine whether a provision is mandatory or directory The broad purpose

of the statute is important The object of the particular provision must be considered The link between the two is most important The weighing of the consequence of holding a provision to be mandatory or directory is vital and more often than not determinative of the very question whether the provision is mandatory or directory Where the design of the statute is the avoidance or prevention of public mischief but the enforcement of a particular provision literally to its letter will tend to defeat that design the provision must be held to be directory so that proof of prejudice in addition to non compliance of the provision is necessary to invalidate the act complained of It is well to remember that quite often many rules though couched in language which appears to be imperative are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit The negligence on those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute It is as well to realise that every prescription of a period within which an act must be done is not the prescription of a period of limitation with painful consequences if the act is not done within that period

Applying the same test in the instant case I find that according to report of the Director the mere fact that the result was sent after more than one month has not caused any prejudice to the parties So the mere non observance of the provision was not sufficient to invalidate the aforesaid report in this case

15 In this view of the matter I do not find any weight in these contentions So the conviction is upheld Sentence cannot be regarded as excessive Revision is accordingly dismissed Interim order dt 22 6 80 is hereby vacated Let revisionists surrender to their bail bonds and taken into custody to serve out the sentence awarded to them Their bail bonds are cancelled

Revision dismissed

1986 ALL L J 3

M WAHAJUDDIN J

Deepak Sachdeva Applicant v State of U P Opposite Party

Criminal Appln No 10912 of 1984 D/ 26 4 1985

Criminal P C. (2 of 1974), S 482 — Inherent powers — Exercise of — Seizure of truck and foreign liquor — Collector exercising powers under Excise Act — Trial not commenced — High Court under S 482 would not interfere (U P Excise Act (4 of 1910) Ss 72(2), 72(8))

Case under the Excise Act was launched against the Transport Company and the truck along with foreign liquor was seized On an application by the Managing Director of the Company the Magistrate concerned passed an order releasing the consignment in favour of the Managing Director on executing a personal bond According to company this order showed that the Courts did not doubt the genuineness of the papers concerning the truck The trial had not commenced An application under S 482 was moved by the company for quashing the proceedings before the Collector on the ground that the order of Magistrate who would hold the trial should prevail and proceedings before Collector were a misnomer and could not proceed

The application under S 482 was liable to be dismissed as the Collector was exercising his powers Whatever orders passed by the Collector would be subject to the ultimate orders which are passed under S 72(8) of the U P Excise Act by the Magistrate of competent jurisdiction on institution of the case but not at any earlier stage (Para 4)

Cases Referred Chronological	Paras
1983 All LJ 1197	4

M K Garg and Ramesh Chand Shukla for Applicant A G A for Opposite Party

ORDER — The applicant has come forward with a prayer that the proceedings concerning truck as well as the foreign liquor pending before the Collector Kanpur be quashed The applicant is the Managing

JC JC/E595/85/VAN

Director of M/s Sachdeva Roadlines (P) Ltd Indore doing transport business Large number of crates of imported wine were being transported by the applicants truck involved and the truck was detained at Kanpur and the police authorities seized the truck and the foreign liquor and a case under the Excise Act was launched It would appear that the applicant moved an application before the Magistrate concerned for release of the property in applicants favour The court passed an order dt 10-10-1984 to the effect that the consignment in question be released in favour of the applicant as custodian and carrier of the property on executing a personal bond of Rs 50 000/ with two surettes in the like amount

2 It is being urged that as by this order the court held that the papers are in order and in the mind of the court there is nothing to doubt the genuineness of the papers concerning the truck the property has to be released I may at the very out set observe that this order of the Magistrate is an interlocutory order The criminal case is still pending and even the trial has not commenced It is argued that it is the order of the Magistrate who would be holding the trial which has to prevail and any proceedings before the Collector in respect of the property is a misnomer and cannot proceed I may at this stage quote sub cl (2) of S 72 of the Act as relied upon —

72(2) Where any thing or animal is seized under any provision of this Act and the Collector is satisfied for reasons to be recorded that an offence has been committed due to which such thing or animal has become liable to confiscation under sub-sec (1) he may order confiscation of such thing or animal whether or not a prosecution for such offence has been instituted

Provided that in the case of any thing (except an intoxicant) or animal referred to sub-section (1) the owner thereof shall be given an option to pay in lieu of its confiscation such fine as the Collector thinks adequate not exceeding its market value on the date of its seizure

3 The expression used is express and significant What is provided is that the Collector is satisfied for the reasons to be recorded that an offence has been committed concerning the property involved The Act is a special Act and naturally will override the provisions of the general Act Once it is expressly provided that the Collector is to be satisfied whether an offence has been committed and to proceed regarding confiscation etc of the vehicle or the thing the Collector is vested with that jurisdiction and even if for any interlocutory order the Magistrate observed otherwise that will not bar the jurisdiction of the Collector It was brought to the notice of the Magistrate that the proceeding has started before the Collector but he still did not take notice of S 72(2) of the Excise Act Of course the Magistrate has the ultimate jurisdiction under sub-sec (8) of S 72 of the Act concerning the disposal of the property in case the prosecution is launched and his order would be final but that stage has not reached

4 On the authority of the case of State of U P v R A Jaiswal 1983 All LJ 1197 where Collector is exercising any powers this Court will not exercise inherent powers under S 482 Cr P C That case relates to the provisions of Ss 6A to 6C of the Essential Commodities Act The principles however would apply to any such powers conferred under any other Special Act So no interference can be made by this court and the application under S 482 Cr P C is dismissed I may however make it clear that whatever orders are passed by the Collector will be subject to the ultimate orders which are passed under S 72(8) of the Excise Act by the Magistrate of competent jurisdiction on institution of the case but not at any earlier stage

5 The learned counsel for the applicant pointed out that the notice given by the Collector is confined to the truck and not to the liquor It appears to be so but this point can well be raised before the Collector

Application dismissed

1986 ALL L J 5

A N DIKSHITA J

Maqbool Ahmad Petitioner v Bhura Lal and others Opposite Parties

Contempt Petn No 250 of 1985 D/ 5 7 1985

Contempt of Courts Act (70 of 1971), Ss 2(b), 12 — Contempt" — Meaning of — Application under S 12 against Director of Enforcement Directorate and Assistant Director, Enforcement Directorate for disobeying order of High Court to release passport and air ticket seized from complainant — Conditions imposed by order not fulfilled by complainant himself — No time limit fixed by order for release of documents — Officers complained against not guilty of contempt — Application with ulterior motive — Exemplary costs awarded (Civil P C (5 of 1908), Ss 35 and 35 A)

Where an application under S 12 was filed against the Director Enforcement Directorate and Assistant Director Enforcement Directorate on ground that they disobeyed the order of the High Court to return the passport and the air ticket seized from the applicant to enable him to pay a visit to Singapore but the conditions imposed by the order had not been fulfilled by the applicant and no time limit was fixed in the order of the High Court for the return of the documents hence the opposite parties could not be charged with flouting the orders of High Court and could not be said to be guilty of contempt The instant petition has been moved by the applicant with the ulterior motive on cooked up allegations to harm and cause humiliation to the opposite parties with a view to achieve his object in getting his passport and air ticket released The allegations and imputations in the petition are reckless baseless and false Such a petition deserves to be dismissed It would be a sad day when a person succeeds in his game and achieves his goal by making pernicious allegations against public servants who are performing their duty within their rights Of course if the allegations of contempt are found to be true the dignity of High Court has to be upheld and High Court will not hesitate from dealing with the contemner with iron hands and taking appropriate action against him but in a case like the present where the allegations and imputations of the applicant have been found to be untrue reckless frivolous and false High Court has to protect the public servants against when such allegations are made and they are entitled to be compensated suitably for the harassment Exemplary costs assessed at Rs 2000/ to be paid to opposite parties personally in equal shares awarded against the applicant for being paid to opposite parties (Paras 9 and 11)

Dilip Kumar for Applicant Standing Counsel for Opposite Parties

ORDER — The instant application under S 12 Contempt of Courts Act read with S 151 C P C has been filed by one Sri Maqbool Ahmad for taking action against the opposite parties

1 Sri Bhure Lal Director Enforcement Directorate New Delhi 2 Sri O N Chatopadhyay Assistant Director Enforcement Directorate (FERA) Varanasi and 3 Sri M H Khan Enforcement Officer Enforcement Directorate (FERA) Varanasi for the disobedience of an interim order dated 24th May 1985 passed in Civil Misc Writ No 7193 of 1985 and also for utterances made by opposite parties 2 and 3 thereby lowering down the dignity of the Court and tending to scandalise it much to the prejudice of the applicant The prayer in the petition however is

It is therefore most respectfully prayed that this Hon ble Court may graciously be pleased to summon the opposite parties along with the Passport and Air Ticket of the applicant on or before 2nd July and punish the opposite parties for committing the contempt of this Hon ble Court both by not complying with the order dated 24-5 1985 and also for making indecent remarks with a view to belittle the authority of this Hon ble Court

2 In brief the facts as disclosed in the present petition which gave rise to the filing of the writ petition passing of an interim order on 24 5 1985 and then ultimately the filing of this petition are these In the year 1952 the applicant went to Singapore on an Indian

passport and he started some business there After the independence of Singapore the persons living in Singapore continuously since 1952 were granted the status of permanent residents of that country and were also permitted to retain their original nationality The petitioner who was residing at Singapore since 1952 thus became a permanent resident of Singapore and also retained his Indian nationality As a permanent resident of Singapore the applicant could in view of the policy of Singapore authorities engage himself in business and could also acquire property there The applicant is a partner of M/s Maqbool Ahmad Quddoos traders which deal in general merchandise According to the laws of Singapore a permanent resident would cease to be a permanent resident of that country if he stayed in any other country on a visa issued by Singapore authorities for a period of more than one year The applicant obtained an Indian passport issued by the Indian Emb issy at Singapore and a re entry permit visa valid up to 9 7 1985 issued by the authorities o Singapore for visiting India The applicant came to India on 10 7 1984 After his arrival in India the petitioner wanted to go back to Singapore on 20 12 1984 but when he was boarding a plane he was arrested on suspicion by the officials of the Enforcement Directorate in Bombay Nothing incriminating w s found from the possession of the applicant yet the applicant was arrested and his passport and the air ticket were seized by the authorities of the Enforcement Directorate

3 On an application being made by the applicant he was released on bail by the Chief Judicial Magistrate (Special) Allahabad on 19 1 1985 with the condition that the applicant shall not leave India during the pendency of the case The applicants efforts to get back his passport and the air ticket from the authorities failed The applicant succeeded in securing an order from the Magistrate to visit Singapore for two months but such an order was upset in revision by the IV Additional District Judge Allahabad

4 Feeling aggrieved and perhaps also in view of the fact that the re entry permit/visa of the applicant was to expire on 9 7 1985 the applicant filed writ petn No 7193 of 1985 in this Court on 17 5 1985 in which the following interim order was passed

The Director of the Enforcement Directorate (FERA) the respondent shall return the passport and the air ticket seized from the petitioner to the petitioner so as to enable him (petitioner) to pay a visit to Singapore The petitioner shall return to India within one month from the date of the return of passport to him by the Director Further the Director shall not hand over either the passport or the air ticket to the petitioner unless and until the petitioner furnishes a guarantee of a nationalised Bank to the tune of Rs 50 000 (Rupees fifty thousand) only in favour of the Director It is made clear that if the petitioner does not return to this country within a month from the date of the receipt of the passport from the Director the said Bank guarantee shall stand forfeited In addition to this the petitioners passport shall be impounded

sd/- S K D
sd/- S K M
24 5 85

5 It is stated in the petition that after obtaining certified copy of the above interim order the applicant tried to contact opposite party 2 in his office but as he was not available nothing could be done The applicant then rushed to Delhi and tried to contact opposite party 1 Sri Bhure Lal Director of Enforcement Directorate but he was informed there that the copy of the order be served on opposite party 2 The applicant after some efforts could find opposite party 2 in the High Court where he had come in connection with some other case and tried to serve upon him the certified copy of the High Court s order on him The opposite party 2 however refused to accept the copy of the order and instead made the following remarks

Copy ham nahin lenge High Court ke order ko ham kuch nahi sunnaiey jo karna ho kar leejye

Thereafter it seems an application along with the original certified copy of the High Courts order dated 24 5 1985 and the original Bank Guarantee of Rs 50 000/ were presented to opposite party 1 at Delhi who forwarded the same to opposite party 2 with suitable orders for compliance of the High Court s order It further appears that on 7 6 1985 the applicant sent by registered post copies of the writ petition the order dated 24 5 1985 and the Bank Guarantee of Rs 50 000/ of Andhra

Bank Jhonstonegan Allahabad to opposite party 2 On 18 6 1985 the applicant went to opposite party 2 but he was not present in office It was on 25 6 1985 that the applicant could meet opposite party 2 On the request of the applicant to opposite party 2 to comply with the orders of the High Court the opposite party 2 is alleged to have remarked as under

High Court ke aise order ko ham nahi mantey ham Aise Aise order to ek botal sharab main mil jatey hain Dekhen aap kaise Singhpore Jayengey

It is also stated in the petition that the opposite party 3 Sri H M Khan Enforcement Officer of the Directorate met by chance to the applicant at Azamgarh and on the request of the applicant to return the passport and the air ticket Sri Khan demanded an illegal gratification of Rs 20 000/ for the return of the said documents On the refusal of the applicant to pay any bribe the opposite party 3 Sri M H Khan uttered as follows

Aise high court hamen bahut dekhe hain Dekhe tum 9 tu ekkk se pehlen kaise Singapore chale jaoge

6 On such allegations the petition was moved before me on 26 6 1985 It was founded on scandalous utterances made by opposite parties 2 and 3 whereby inviting application of S 2(c) of the Act as well as disobedience of the order passed by this Court on 24th May 1985 as has been reproduced above No such allegation of disobedience or any utterances is attributed against opposite parties 2 and 3 has however been made against opposite party 1 A direction was issued on 28 6 1985 to opposite parties 2 and 3 to present themselves in person before this Court on 2 7 1985 along with the passport and the air ticket of the applicant

7 In compliance with the above direction issued by this Court the opposite parties 2 and 3 appeared in Court on 2 7 1985 and also filed their counter affidavit On that date while dispensing with the personal attendance of the said opposite parties the case was ordered to be listed on 4 7 1985 but it came to be heard on 5 7 1985

I have heard the learned counsel for the applicant and the learned Standing Counsel for the Central Government appearing on behalf of the opposite parties and have also carefully gone through the petition the supporting affidavit and the supplementary affidavit sworn by the applicant the two counter affidavits filed by opposite parties 2 and 3 as also the order of this Court passed on 24 5 1985 which contains the condition of furnishing a Bank Guarantee of Rs 50 000/ by the applicant to enable him to secure the passport and the air ticket from the opposite parties

During the course of the hearing of the case it was at no stage urged on behalf of the applicant that the opposite parties 2 and 3 ever did or said something so as to invite the application of S 2(c) of the Act Learned Counsel for the petitioner only pressed for taking action in regard to the disobedience of the order dated 24 5 1985 The plea for taking action for criminal contempt thus has not been pressed and has apparently been given up by the applicant

The opposite parties 2 and 3 in their counter affidavit have categorically denied the allegation of the applicant that they made any utterances as attributed to them They have submitted that they have great respect for judgments and orders passed by Courts of law and they had no intention and in fact did not disobey the order dated 24th May 1985 passed by this Court They have further stated that they could not utter any words which were to undermine the prestige of this Court The averments in the counter affidavits that there were some defects in the Bank Guarantee furnished by the applicant and to rectify the same telegram and letters were sent to the applicant and it was the applicant himself who delayed the matter The supplementary affidavit filed by the applicant admits receipt of the telegram and letters sent by the opposite parties and states that since there were defects in the Bank guarantee furnished by the applicant as intimated vide letter dated 24 6 1985 he purchased a fresh Bank guarantee on 3 7 1985

8 From the above it is crystal clear that the opposite parties were fully within their rights in not returning the passport and the air ticket to the applicant unless the condition imposed in the order of this Court dated 24 5 1985 was fully satisfied by the applicant namely that a valid and proper Bank guarantee of Rs 50 000/ was furnished by the applicant

in favour of the Director of the Enforcement Directorate Delhi It may be mentioned that there was no time limit fixed in the interim order of the High Court for the return of the documents and hence the opposite parties could not be charged with flouting the orders of this Court and more so when the condition of the said order was not fulfilled by the applicant before 3 7 1985

9 From the above narration of facts I have come to the conclusion that the opposite parties did not flout the interim order dated 24 5 1985 passed by this Court and are thus not guilty of any contempt I am also fully satisfied that the instant petition has been moved by the applicant with the ulterior motive on cooked up allegations to harm and cause humiliation to the opposite parties with a view to achieve his object in getting his passport and air ticket released The allegations and imputations in the petition are reckless baseless and false Such a petition deserves to be dismissed It would be a sad day when a person succeeds in his game and achieves his goal by making pernicious allegations against public servants who are performing their duty within their rights Of course if the allegations of contempt are found to be true the dignity of this Court has to be upheld and this Court will not hesitate from dealing with the contemner with iron hands and taking appropriate action against him but in a case like the present where the allegations and imputations of the applicant have been found to be untrue reckless frivolous and false this Court has to protect the public servants against when such allegations are made and they are entitled to be compensated suitably for the harassment I therefore propose to award exemplary costs against the applicant for being paid to opposite parties 2 and 3 personally

10 While I have come to the conclusion that the petition must be dismissed with costs I would like to observe that it would be in the fitness of things that after the formalities have been completed and costs have been paid the passport and the air ticket of the applicant be returned to him Learned counsel for the opposite parties and the opposite party 2 himself frankly inform this Court that the formalities will take only 24 hours Let this be done by 6 7 1985

11 In the result the petition fails and is hereby dismissed with costs which I assess at Rs 2000/ to be paid to opposite parties 2 and 3 personally in equal shares In addition the applicant shall also pay the expenditure incurred by opposite parties 2 and 3 during their stay at Allahabad which is reported to be from 30 6 1985 to 5 7 1985 The learned Standing Counsel will prepare a bill of expenditure of opposite parties 2 and 3 and the learned counsel for the applicant will make payment on that basis within 24 hours to the Standing Counsel The applicant is also directed to pay Rs 1000/ as costs to the learned Standing Counsel appearing on behalf of the opposite parties After the payments are made by the applicant the learned Standing Counsel will issue a receipt for the amount received by him as costs and for the amounts received by him on behalf of opposite parties 2 and 3

Petition dismissed

1986 ALL L J 8

H N SETH J

Mrs Ethel Walters Petitioner v Ajit Datt and others Opposite Party

Testamentary Suit No 1 of 1983 D 8 7 1985

(A) Succession Act (39 of 1925), S 29(2) — Expression a law for the time being in force — Custom amongst Christians — Intestate succession — Not governed by any custom — Adopted child does not inherit properties of the adoptive father

Any custom pertaining to succession inheritance adoption etc prevailing amongst the Indian Christians in territories governed by the Bengal Agra and Assam Civil Courts Act cannot be regarded as a law for the time being in force as contemplated by S 29(2) of the Succession Act and despite any such custom prevailing in any section of the Christian community in the State the intestate succession in respect of their properties is to be governed by the provisions contained in the Succession Act and for that purpose any custom or rule of justice equity and good conscience would be irrelevant So far as the State of Uttar Pradesh is concerned intestate succession of Indian Christians is governed by

the provisions contained in the Indian Succession Act 1925 and any custom prevalent in the State in this regard would for purposes of succession be irrelevant (Paras 13 16)

The lineal consanguinity contemplated by S 25 of the Act is the real consanguinity and not the notional or fictional consanguinity The adopted son continues to be the descendant in the direct line of his natural father Thus the word children in S 37 of the Act will not cover the case of an adopted child who cannot be described as lineal descendant of the person adopting him (Para 18)

Therefore the right to succeed to he properties left intestate by a Christian widow is governed not by any custom but is governed by the provisions contained in the Succession Act Further under the provisions of Succession Act a child adopted by a person for being brought up as a son does not inherit the properties left by him (Para 20)

(B) Christian Law – Custom – Adoption – No custom to claim being heir of deceased through adoption

There is neither any Statutory Law nor is there any legally recognised custom prevailing amongst Christians which entitles a Christian to adopt a child in the sense of giving to such child the privileges and status of natural child A child who has been adopted by a Christian for being brought up as his/her son does not become entitled to the privileges of a natural son and he does not become entitled to succeed to the properties of the person adopting him (Para 47)

Cases Referred	Chronological	Paras
AIR 1970 SC 223	15	25
(1950) 54 Cal WR (2DR) 14		14
AIR 1940 All 134	19	45
AIR 1922 PC 14		23
(1861 63) 9 Moo Ind App 195 (PC)		25
12 Cl 706 Lopez v Lopes		19

S N Verma K N Tripathi and P K Mukerji for Petitioner Sridhar S K Malvia M Katju S S Bhatnagar G N Verma and R N Bhalla for Opposite party

ORDER – Controversy in thi testamentary suit concerns the estate of late Smt Maud Flora Datt wife of late Sri E E Datt who died issueless and intestate at Allahabad on 5 12 1980

2 On May 5 1981 Smt Ethel Walters sister of the deceased Smt Maud Flora Datt (hereinafter described as Maud Datt) presented a petition (Testamentary Case No 7 of 1981) before this Court praying for the grant of Letters of Administration in respect of the estate of the deceased specified in Annexure-1 to the petition According to her Smt Maud Datt had, apart from the petitioner left behind three brothers two real and two half sisters as her next of kins She came to know that Sri Ajit Datt son of Sri E E Datt s brother Archibald Datt had claiming himself to be the adopted son of Smt Maud Datt and her husband E E Datt filed a suit in the Court of Munsif Chail, Allahabad (Suit No 898 of 1980) Ajit Datt v Sumi Sarkar and another) praying for a mandatory injunction restraining the defendants of that suit from changing or altering the shape of one of the properties comprised in the estate of the deceased Smt Maud Datt According to the petitioner there is no provision for adoption either in the Christian Law or in the Succession Act and the alleged adoption of Ajit Datt by E E Datt and Smt Maud Datt is absolutely invalid and that she being the next of the kin of the deceased is entitled to maintain the petition for the relief claimed by her The petitioner also requested that notice of the petition be issued not only to the next of the kins named by her but also to four others including Sri Ajit Datt who according to her were in the circumstances of the case proper parties in these proceedings

3 Smt Asha Sarkar described in the petition as one of the proper parties filed a counter affidavit (paper No A 6) accepting the claim of the petitioner She however claimed that one of the properties mentioned in Annexure-1 to the petition namely the Fixed Deposit Receipt No (not mentioned) for a sum of Rs 10 000/ was held jointly by her and Smt Maud Datt The amount due under that receipt was payable to either of them or to the survivor According to her said property belonged to her and could not be made the subject matter of these testamentary proceedings

4 Sri Ajit Datt put in a caveat and also

filed a counter affidavit (paper No A 81) in that affidavit he contended that soon after his birth he was adopted by and baptised as the son of Sri E E Datt and Smt Maud Datt in accordance with the custom of adoption prevailing amongst Indian Christians and in the family of late Sri E E Datt and Smt Maud Datt He contended that the said custom is not contrary to the principles of Christianity In para 11 of his objections Ajit Datt went on to assert that his grandfather Late Rai Saheb Jeewan Datt owned considerable property and the family had a custom whereby succession was in accordance with the Hindu Law and daughter got no share in their father s property His ancestors were originally Hindus residents of undivided Punjab and were governed by Mitakshara School of Hindu Law and the law and customs both recognised adoption of male child The family after conversion carried along with them their ancestral customary law in the secular aspects and the conversion to Christianity merely resulted in change in mode of worship He therefore contended that in his presence that is in the presence of the son of Smt Maud Datt the petitioner who is merely her sister is not entitled to take out the Letters of Administration in respect of the estate left by the deceased

5 In her rejoinder affidavit (paper No A 100) petitioner E Walters asserted that the law of the country does not recognise any notion of adoption amongst Christians She denied that any such custom of adoption existed either amongst Indian Christians or in the family of late Sri E E Datt According to her Sri Ajit Datt was never adopted by Sri E E Datt and Smt Maud Datt and that she being one of the heirs and legal representatives of the deceased in accordance with the provisions contained in the Succession Act is entitled to take out the Letters of Administration sought for by her The petitioner also stated that the sum of Rs 10 000/- under the fixed deposit receipt standing jointly in the names of Smt Maud Datt and Asha Sarkar has as per conditions of deposit been rightly paid over to Smt Asha Sarkar She has thus conceded to the objection in this regard raised by Smt Asha Sarkar

6 Dr Smt D M Khan a sister of the petitioner who was arrayed as opposite party No 1 addressed a letter (paper No A 121) to the Deputy Registrar of the Court informing him that soon after his birth at Kamla Nehru Hospital the son of Sri and Smt Archibald Datt was taken in adoption by Sri and Smt E E Datt as their own son in her presence and that Ajit Datt was their son for all religious and spiritual aspects is there was an honorable and gentlemanly agreement between Sri Archibald Datt and his wife Smt Neera Datt on the one hand and Sri E E Datt and his wife Smt Maud Datt (deceased) on the other Thus Sri Ajit Datt was the only heir of the deceased and that she did not want to contest and enjoy the right of a claimant of movable and immovable properties left by Smt Maud Datt

7 As there was a contest the proceedings in Testamentary Case No 7 of 1981 were converted into a suit and these proceedings were renumbered as Testamentary Suit No 1 of 1983 The Court then on the basis of the pleadings of the parties framed following four issues in the case —

1 Whether Sri Ajit Datt was adopted by Sri E E Datt under the Christian Law

2 Whether Sri Ajit Datt subsequently renounced his alleged adoption?

3 Whether any person through adoption under Christian Law can claim to be the heir of the deceased?

4 To what relief is the plaintiff entitled?

8 In the instant case right to obtain Letters of Administration of the estate left by Smt Maud Datt is governed by Section 210 of the Indian Succession Act Inasmuch as the deceased was not survived by her husband the case is covered by Clause (c) of Sec 219 which lays down that in such cases the administration of the estate is to be committed to the person or persons who would be beneficially entitled to the estate according to the rules of distribution of an intestate's estate The case of the petitioner is that inasmuch as the deceased was not survived by her husband or any lineal descendant or father or mother she being the sister of the deceased was beneficially entitled to the estate according to the rules of distribution of intestates estate laid down in Section 47 of the Indian Succession Act The contention of Sri Ajit Datt on the other hand is that as he was the adopted son of Smt Maud Datt he was entitled to succeed to the estate left by her in

accordance with the custom prevailing amongst the Indian Christians as also in the family to which smt Maud Datt belonged and that the petitioner was not beneficially entitled to the estate left by the deceased He further contended that having been adopted by Smt Maud Datt as a son he was in the position of her son and was under Section 37 of the Indian Succession Act entitled to succeed to her estate in preference to the petitioner who was merely a sister of the deceased

9 It will thus be seen that the crucial controversy to be resolved in this case is regarding the right of Ajit Datt to succeed to the properties left by Smt Maud Datt

10 Whereas according to the petitioner succession to an Indian Christian dying intestate is governed by the provisions contained in the Indian Succession Act the case of Ajit Datt is that in his case such succession is governed by the custom prevalent in the family to which he belonged In support of his submission that in the instant case succession is not governed by the provisions of Indian Succession Act learned counsel appearing for Ajit Datt invited attention of the Court to Section 29 of the Indian Succession Act which runs thus —

29 Application of this part —

1 This part shall not apply to any intestacy occurring before the first date of January 1866 or to the properties of any Hindu Mohammaden Budhist Sikh or Jain

2 Save as provided in sub-section (1) or by any other law for the time being in force the provisions of this part shall constitute the law of India in all cases of intestacy

and urged that the expression any other law for the time being in force used in sub-section (2) quoted above embraces within its ambit not only statutory law but the customary law applicable to concerned parties Accordingly in case the petitioner is as claimed by him able to substantiate that there is a custom governing intestate succession in the family to which Sri E E Datt and Smt Maud Datt belonged succession to Smt Maud Datt will be governed by the custom and not by the provisions contained in Indian Succession Act The rules governing distribution of estate will have to be spelled out in the light of such custom and in this regard rules for distribution of estate contained in the Indian succession Act would not at all be relevant

11 In order to substantiate the plea that the custom for intestate succession prevailing in Sri E E Datt s family is to be equated with the expression law for the time being in force used in Sec 29(2) of the Indian Succession Act and that the rule of succession contained in the Indian Succession Act stands excluded learned counsel appearing for Ajit Datt relied upon the provisions contained in Sec 5 of the Punjab Laws Act (Act 4 of 1872) and corresponding provision contained in Section 27 of the North West Province Regulation (7 of 1901) which stipulate —

Questions regarding inheritance dower adoption guardianship minority bastardy family relations will legacies partition or any religious usage or institution the rule of decision shall be

(a) any custom of any body or class of persons which is not contrary to justice equity and good conscience and has not been declared to be void by any competent authority

(b) the Mohammedan law in cases where the parties are mohammedans and the Hindu law in cases where the parties are Hindus except in so far as such law has not been altered or abolished by legislative enactment or is opposed to the provisions of this Act or has been modified by any such custom as is referred to in the preceding clause of this Section

and contended that aforementioned enactment gives subject to any subsequent legislative enactment on the subject of inheritance adoption etc legislative recognition to custom of any body or class of persons which is not contrary to justice equity and good conscience or which has not been declared to be void by a court of law and enjoins upon the courts of law to decide the dispute arising before it in accordance with such custom Accordingly if Ajit Datt succeeds in establishing the custom set up by him it would have the force of law and succession to Smt Maud Datt s estate would be governed by such custom and not by the provisions contained in the Indian Succession Act

12 I am afraid that the reliance placed by the learned counsel on the provisions of Sec 5

of the Punjab Laws Act (Act 4 of 1872) and the Provisions of Section 27 of the North West Province Regulations (7 of 1901) is absolutely misplaced These two enactments merely enjoin upon the civil courts located within the respective territories to which they apply to decide the causes coming up before them in the manner laid down therein These provisions do not regulate the proceedings in civil courts now lying within the territorial limits of the State of Uttar Pradesh The corresponding provision concerning the manner in which the causes coming up before the civil courts located in the state of Uttar Pradesh is contained in Section 37 of the Bengal Agra and Assam Civil Courts Act 1887 which runs thus —

Sec 37 Certain decisions to be according to personal law — (1) where in any suit or other proceeding it is necessary for a civil court to decide any question regarding succession inheritance marriage or caste or any religious usage or institution the Mohammaden Law in cases where the parties are Mohammedan and the Hindu Law in cases where the parties are Hindu shall form the rule of decision except in so far as such law has by legislative enactment been altered or abolished

(2) In cases not provided for by sub-sec (1) or by any other law for the time being in force the court shall act according to justice equity and good conscience

According to this section the civil courts governed by the Bengal Agra and Assam Civil Courts Act have to decide all questions concerning Indian Christians in accordance with same law which is for the time being in force and if there be no such law in existence then in accordance with the principles of justice equity and good conscience It has to be kept in mind that the section makes a clear distinction between the requirement to decide a cause in accordance with the law for the time being in force and that in absence of such law to decide the same in accordance with the principles of justice equity and good conscience In the context principles of justice equity and good conscience are not to be equated with the expression laws for the time being in force

13 It may be that the learned counsel is right in contending that Sec 5 of the Punjab Laws Act and Sec 27 of the North West Province Regulations give legislative recognition to the customs regarding adoption inheritance etc prevailing in a particular class or community and that such customs may be considered to be laws in force in the area to which those enactments apply but then those enactments are not at all relevant while considering the cases arising in the area to which the Bengal Agra and Assam Civil Courts Act applies Section 37 of the Bengal Agra and Assam Civil Courts Act does not permit the civil courts in this state to base their decisions on the basis of any custom prevailing amongst Indian Christians except in so far as those customs may be looked into for determining the rule of justice equity and good conscience in causes which the courts in the State are required to decide in accordance with such rule Viewed in this light any custom pertaining to succession inheritance adoption etc prevailing amongst the Indian Christians in territories governed by the Bengal Agra and Assam Civil Courts Act cannot be regarded as a law for the time being in force as contemplated by Sec 29(2) of the Indian Succession Act and despite any such custom prevailing in any section of the Christian community in the State the intestate succession in respect of their properties is to be governed by the provisions contained in the Indian Succession Act and for that purpose any custom or rule of justice equity and good conscience would be irrelevant

14 Learned counsel appearing for Ajit Datt placed strong reliance in the case of Nabu Jan v Paushi Moni (1948) 54 Cal WN 12 DR 14 wherein learned Judges of the Calcutta High Court distinguished the decisions of various courts rendered under the Indian Succession Act 1865 to the effect that after enactment of that legislation Succession in respect of convert to Christian religion was governed by that Act alone and held that in the matter of succession customary law of Gharo Christians would prevail over the provisions contained in the Indian Succession Act In this case the learned Judges of the Calcutta High Court proceeded on the assumption that with regard to succession there existed a custom amongst the Gharo Christians and non Christians alike which had the force of law The circumstances in which such custom had been recognised as having legal

force was neither adverted to nor considered by the learned Judges of the Calcutta High Court It is not known whether the civil courts in Charo Hills are governed by the provisions of the Bengal Agra and Assam Civil Courts Act or by any other regulation containing provisions similar to the Punjab Laws Act (Act 4 of 1872) and North West Province regulation (7 of 1901) giving legal recognition to such customs concerning succession inheritance adoption etc In these circumstances I am on the basis of Nabu Jan s case (supra) unable to hold that any custom prevailing in any section of Christians would override the rule of succession laid down in Indian Succession Act 1925

15 In this connection my attention was also invited to a decision of the Supreme Court in the case of Anthonyswamy v N R Chinaswami AIR 1970 SC 223 in which the court was called upon to consider the question as to whether the doctrine of pious obligation was applicable to Vannia Tamil Christians of Chittur Tehsil in Kerala, who were in respect of succession inheritance etc by custom governed by Mitakshara School of Hindu Law In this case the controversy was not as to whether succession of Vannia Tamil Christian was to be governed by the custom prevailing in such community or by the Indian Succession Act In paragraph 6 of the judgment the learned Judge of the Supreme Court pointed out that such a practice had been recognised in a number of cases spread over a long period and that it had also received legislative recognition by Section 2(2) of the Cochin Christian Succession Act (6 of 1897) which provided that nothing contained therein was deemed to affect succession to the property of the Vannia Tamil Christian of Chittur Taluk who followed Hindu Law The controversy before the Court was whether doctrine of pious obligation which was claimed to be a purely religious doctrine pertaining to Hindus would also be applicable to such Christians who were in the matter of succession and inheritance governed by the Hindu Law In this connection the Court concluded thus —

For the reason already given we are of opinion that the doctrine of pious obligation is not merely a religious doctrine but has passed into realm of law It is an integral part of Mitakshara school of Hindu Law wherein the sons from the very moment of their birth acquire along with their father an interest in the joint property The doctrine is in consonance with justice equity and good conscience and is not opposed to any principle of Christianity It is for this reason that the High Court is right in its conclusion that the doctrine of pious obligation is applicable to the community of Tamil Vannia Christian of Chittur District

In Anthonyswami s case (supra) the custom regarding succession amongst Vannia Tamil Christians had been endowed with legal efficacy and as such nothing contained in that decision runs counter to the view on the subject expressed by me above Secondly the Supreme Court applied the doctrine of pious obligation to Vannia Tamil Christians not on the ground of custom or customary law but on the ground that such practice prevailing in the community was perfectly in accordance with the principles of justice equity and good conscience I have already explained that applicability of the principles of justice equity and good conscience cannot for purposes of Sec 29 of the Indian Succession Act 1925 be treated or regarded as a law for the time being in force

16 In view of the aforesaid discussion I am clearly of opinion that so far as the State of Uttar Pradesh is concerned intestate succession of Indian Christians is governed by the provisions contained in the Indian Succession Act 1925 and any custom prevalent in the state in this regard would for purposes of succession be irrelevant

17 Main question therefore that arises for consideration in this case is whether according to the rules of succession and distribution of property of an intestate as laid down in the Indian Succession Act a person who has been adopted by the deceased for being brought up as a son is entitled to the property of the deceased Part IV of the Indian Succession Act deals with the subject matter of consanguinity which expression has for the purpose of the Act been equated with the expression Kindred and has been defined by section 24 of the Act thus —

Kindred or consanguinity is the connection or relation of person descended from the same stock or common ancestor

Such connection or relationship

(Consanguinity or Kindred) is of the types namely 1 Lineal consanguinity i e the relationship that subsists between two persons one of whom is descended in a direct line from the other as between a man and his father grandfather great grand father and so upwards in the direct ascending line or between a man and his son grandson great grandson and so downwards in direct descending line See 25 and (2) collateral consanguinity i e relationship that subsists between two persons who are descended from same stock or ancestor but neither of whom is descended in a direct line from the other section 27

18 Chapter II of part V of the Indian Succession Act deals with the rule of intestate succession in cases other than those of Parsis Section 32 which finds place in the said chapter lays down that the property of an intestate shall devolve upon the wife or husband or upon those who are the kindred of the deceased in the order and according to the rules contained in the said chapter Sections 33 to 48 of the Act lay down the rule of devolution of the property of the deceased to wife husband and other kindred in various contingencies stipulated therein Section 34 of the Act provides for the contingency where the deceased dies leaving behind no widow and lays down that in such cases property shall go to his lineal descendant In the context the expression Lineal used in (the) section clearly means a person who is connected with the deceased by way of lineal consanguinity as his descendant in the direct line Now a person who has been adopted by the deceased for being brought up as his/her son is certainly not a person who is descended from such deceased The lineal consanguinity contemplated by section 25 of the Act is the real consanguinity and not the notional or fictional consanguinity The adopted son continues to be the descendant in the direct line of his natural father Accordingly when section 37 of the Act provides that where the intestate has left surviving him a child or children but no more remote lineal descendant through a deceased child the property shall belong to his surviving child if there is only one or shall be equally divided among all his surviving children it clearly envisages that such children whether male or female who are the lineal descendants of the deceased and are as such his kindred Thus the word children in sec 37 of the Act will not cover the case of an adopted child who cannot be described in line of descendant of the person adopting him

19 In taking the view that adoption of a child to him brought up as a son does not bring about consanguinity or kindred of the person adopting him I do is inspiration from the Division Bench decision of this Court in the case of Rambu Kuram Singh v Jogindra Chandra AIR 1940 All 134 wherein the learned Judges after quoting the provisions of sections 5 23 24 25 26 and 29(2) of the Indian Succession Act observed thus

It will thus be noticed that there is absolutely no mention of adoption as creating any kind of relationship whatsoever

Learned counsel for Ajit Datt then referred me to the provisions contained in section 3 of the Indian Divorce Act which recognises that prohibited degree of consanguinity can be of two types I natural and 2 legal Relying upon a decision of a Full Bench of the Calcutta High Court in the case of Lopez v Lopez 12 C 1 706 he urged that the consanguinity created by adoption is to be regarded as legal consanguinity It may be so for purposes of the Indian Divorce Act but then in view of the provisions of the Succession Act as explained above I do not think it permissible to import the concept of prohibited degree of legal consanguinity in the expression as defined in the Indian Succession Act

20 In the result I conclude that right to succeed to the properties left by Smt Mad Datt is governed not by the alleged custom set up by Ajit Datt but is governed by the provisions contained in the Indian Succession Act Further under the provisions of Indian Succession Act a child adopted by a person for being brought up as son does not inherit the properties left by him

21 Even though aforementioned discussion is sufficient to dispose of the controversy involved in the suit I would in view of the fact that this judgement is open to appeal proceed to consider other aspects of the case on which submissions were made by learned counsel for the parties as well

22 Learned counsel appearing for Ajit Datt contended that originally the ancestors of Sri E E Datt were Hindus who hailed from

Punjab They were in the matter of succession governed by the Mitakshara School of Hindu Law After their conversion to Christianity they in the matter of succession continued to be governed by the same rule Accordingly after Sri E E Datt adopted Ajit Datt as his son Ajit Datt became in accordance with the rule of succession under the Mitakshara entitled to succeed to the estate of Smt Maud Datt (wife of E E Datt) In substance the submission is that despite conversion to Christianity the family to which Sri E E Datt belonged continued to be in the matter of succession governed by the law which was applicable to it prior to its conversion

23 So far as this submission is concerned it stands concluded against Ajit Datt by a Division Bench decision of this Court in the case of Ranbir Karam Singh v Jogendra Chandra Bhattacharji AIR 1940 All 134 wherein the defendant claimed the right to succeed to the estate left by Mrs Surendri Helen Karam Singh widow of Karam Singh as her adopted son It was urged that prior to his conversion to Christianity Karam Singh was a Khatri by caste and as such was in the matter of succession governed by the customary law envisaging adoption as prevailing in Gujranwala district The defendant claimed that even after conversion to christianity the family of Karam Singh continued to be governed by the same custom While repelling this submission the learned Judges constituting the Bench relied upon the observations made by the Privy Council in the case of Kamawati v Digbijai Singh AIR 1922 PC 14 64 Ind Cas 559 ILR 43 All 525 and observed thus —

But even accepting these allegations for the sake of argument as true the question still remains is whether it can be held that even after Mr Karam Singh was converted to Christianity he continued to be governed by the customs prevailing among the Khatris of the district Gujaranwala It seems to us that the argument that succession to the estate of an Indian Christian can be governed by the rules applying to the community to which he belonged before his conversion to Christianity is not sound

24 In this view of the matter I am of opinion that it is not open to Ajit Datt to claim that despite conversion to Christianity the family of Sri E E Datt s ancestors continued to be in the matter of adoption and succession governed by the Hindu Law that is the law which prior to its conversion to Christianity was applicable to the family

25 Learned counsel for Ajit Datt relied upon a decision of the Privy Council in the case of Abraham v Abraham (1861-63) 9 Moo Ind App 195 which decision according to him stands approved by the Supreme Court in the case of Anthonyswamy v Mr Chinaswamy AIR 1970 SC 223 and contended that in case of converts to Christianity from Hinduism it is open to such converts to choose the law by which they would in the matter of succession like to be governed They can if they like adhere to the rules of succession by which they were being governed prior to their conversion There was thus nothing wrong if the ancestors of E E Datt despite their conversion to Christianity chose to be governed by the rules of Mitakshra Mr and Mrs E E Datt therefore were in accordance with the rules of Mitakshra competent to adopt Ajit Datt and Ajit Datt was as their adopted son entitled to inherit their properties

26 The decision of the Privy Council in the case of Abraham v Abraham (supra) related to a period prior to enactment of Indian Succession Act 1865 and Indian Succession Act 1925 when there was no statutory law of succession for Indian Christians The learned Judges of the Privy Council at page 239 of the report observed thus —

Such then being the state of the case so far as the Hindu law is concerned we must next consider whether there is any other law which determines the rights over the property of a Hindu becoming a convert to Christianity The lex loci Act clearly does not apply the parties having ceased to be Hindus in religion and looking to the regulations their Lordships think that so far as they prescribed that the Hindu Law shall apply to Hindus and the Mohammendan law to Mohammendans they must be understood to refer to Hindus and Mohammendans not by birth merely but by religion also They think therefore that this case fell to be decided according to the regulation which prescribes that decision shall be according to equity and good conscience Applying this rule to decision of the case it

seems to their Lordships that the course which appears to have been pursued in India in these cases and to have been adopted in the present case of referring the decision to the usages of the class to which the convert may have attached himself and of the family to which he may have belonged has been most consonant both to equity and good conscience The profession of Christianity releases the converts from the trammels of Hindu law but it does not of necessity involve any change of the right or relation of the convert in matters with which Christianity has no concern such as his rights and interest in and his powers over property The convert though not bound as to such matters either by the Hindu law or by any other positive law may by his course of conduct after his conversion have shown by what law he intended to be governed as to these matters He may have done so either by attaching himself to the class which as to these matters has adopted and acted upon some of law or by having himself observed some family usage or custom and nothing can surely be more just than that the rights and interests in the property and his powers over it should be governed by the law which he has adopted or rules which he has observed

It is absolutely clear that aforementioned observations have been made by the Privy Council in the context where there was no law governing the rights over the property of a Hindu becoming a convert to Christianity and the matter had to be decided as provided by the regulations in accordance with the principles of justice equity and good conscience It was in such a case that Privy Council held that nothing could be more just than that the rights and interests of a convert in his property and his powers over it should be governed by the law which he had adopted or the rules which he had observed Certainly these observations were not intended to on the ground of justice equity and good conscience override statutory provisions Inasmuch as I have already held that the succession to the property of a person whose ancestors had embraced Christianity is governed by the provisions contained in the Indian Succession Act 1925 there is no further scope for applying the principles in Abraham s case to the facts of this case on the ground of justice equity and good conscience and the submission made by the learned counsel in this regard is without merit

27 While proceeding to make his submissions on the assumption that because of the provisions contained in Section 29(2) of the Indian Succession Act the rule of succession contained in the Act would not apply to a case where succession is governed by some custom learned counsel for Ajit Datt submitted that in the instant case there was a custom in the family to which Sri E E Datt belonged as also amongst the Christians owing allegiance to the Church to which he belonged enabling such person to like Hindus adopt sons who acquired the status of natural sons entitled to succeed to their properties

28 In order to appreciate the submission made by the learned counsel as also for evaluating the evidence produced on their behalf it will be pertinent to note that the practice of adoption whereunder the adopted child is to be treated on the same footing as the real child of the person adopting, has been prevalent in Hindu Society for centuries and it is recognised by Hindu Law Whereas in a large number of countries it is of comparatively recent origin in the Muslim countries it is totally unknown Amongst Hindus it is not merely ancient Hindu Law which recognises the practice of adoption but it also has received legislative recognition in Hindu Adoption and Maintenance Act 1956 However in this country there is no statutory law which enables the Christians to adopt children so as to give to them the status of real or natural children The personal law applicable to Christians has been the common law followed in England where under transfer of perental rights and duties in respect of a child to another person and their assumption by such other person is unknown although in equity it is possible for a relative or a stranger to put himself in loco parentis towards child by undertaking the office and duties of a father to make a provision for the child so as to assume a fiduciary position in respect of relationship with the child This neither creates legal relationship nor legal status It may be noticed that subsequently the concept of adoption was introduced in England by the Adoption Act 1926 which was subsequently replaced by the Adoption Act 1958 but then in this country so far as Christians are concerned no law has been enacted on the lines either of the Hindu Adoption and Maintenance Act or on that of

the English Adoption Acts 1926 and 1958 In the case of Ranbir Karam Singh (supra) a Division Bench of this Court pointed out that amongst Christians adoption was not a recognised institution in the sense in which it was understood and recognised amongst Hindus and Hindu Law and observed that it must be remembered that adoption in the technical legal sense is one thing and the bringing up of a child even with the intention of ultimately giving one s property to that child and loosely describing him as having been adopted is quite another

29 It is in the light of aforesaid observations that I will now proceed to consider the question whether Sri Ajit Datt has been able to establish any custom prevailing either in the family to which Sri E E Datt belonged countenancing adoption and like Hindus giving to the adopted child the status of a real child entitling him to succeed to the property of the persons adopting him In support of his case Sri Ajit Datt examined as many as six witnesses namely R W 1 Prem Hemlin R W 2 Dr (Mrs) Daisy M Khan R W 3 Noreen Datt D W 4 father (Rev) Levi D souza D W 5 A C Gilbert and D W 6 George Macdonald White He also produced documents to show that he had been baptised as the son of Sri E E Datt and Smt Maud Datt and that he was being mentioned and treated as the son of Sri and Smt E E Datt

30 R W 1 Prem Hemlin is the son of Smt Maud Datt s brother According to him Sri Ajit Datt had been taken in adoption by Smt Maud Datt when he was about a month or two old and that he was baptised at Deoria The witness further stated that adoption was a common feature amongst Christians and that such adoption took place in his family as well According to him Mrs Dora Simeon (his father s sister) has adopted one George Franklin who was later on named as George Simeon The sister of Dr M Khan had taken the daughter of his other sister Noreen Samuel in adoption and Noreen Samuel had after adoption become Noreen Seymour He also asserted that after the death of Dr Seymour Noreen Seymour had inherited the property left by him In his cross examination, the witness admitted that amongst Christians adoption did not take place in accordance with Hindu Law and that he did not know if apart from the alleged adoption of Sri Ajit Datt any other adoption took place in his family However towards the end of his evidence he stated that there is no custom of adoption amongst Christians

31 R W 2 Dr (Mrs) Daisy M Khan is the eldest sister of Smt Maud Datt According to her as Smt Maud Datt did not have any child she and her husband E E Datt had taken the son of Sri Archibald Datt brother of E E Datt in adoption and that the said son was got baptised at Deoria by Sri and Smt E E Datt According to her there had been cases of adoption in the family of her parents as well as in the family of her in laws She also made a mention about some such cases However in her cross examination she stated that she did not follow any custom prevalent amongst Muslims and that her sister Mrs Ethel Walters and Maud Datt were staunch Christians According to her Maud Datt and her husband also did not follow any custom prevalent amongst Hindus or Muslims She also stated that she never saw any non Christian custom or ritual being observed in the family of Smt Maud Datt or her husband The witness was unable to state if there was any custom of adoption amongst christians

32 R W 3 Smt Noreen Datt is the real mother of Sri Ajit Datt According to her when she was in the family way it was agreed upon by Smt Maud Datt and her husband Sri E E Datt who were childless that in case she bore a son he would be brought up by Maud Datt and her husband Immediately after Ajit was born he was taken away by Maud Datt and her husband to their home They got him baptised at Deoria and brought him up as their own son She also gave instances of adoption by Christians by saying that she herself had been adopted by her uncle and aunty (Phupha and Phuphi) who were issueless and that her husband s first cousin Hari Datt had adopted a child Premin Datt who was a leading Advocate at Moradabad According to her after Ajit Datt had been adopted her husband had purchased certain properties in the district of Nainital in her name as also in the name of her three sons namely Nirmal Amar and Navin implying thereby that after adoption Ajit Datt was not being treated as a member of her family This witness was cross examined with a view to show that her

statement to the effect that immediately after his birth Ajit Datt was given in adoption by her to Mr and Mrs E E Datt was not correct but then it is not necessary for me to advert to the same at this stage

33 D W 4 Father (Rev) Levi Dsouza is the Parish Priest working in St Joseph Cathedral Allahabad He was unable to say whether Hindus converted to Christianity carried their customs of adopting children after becoming Christians He however asserted that during his office as Parish Priest he had seen several cases of adoption in Christian families but then he could not say whether or not parents who adopted children were Hindu converts He gave three instances of cases where adoption had taken place in Christian families

According to him the practice followed was that after adoption of child the adopting parents got the child baptised and that so far as he knew baptism was the only ceremony which completed adoption The witness made the following statement —

I cannot say whether there is a custom of adoption or not but there is a practice of adoption amongst the Christians

34 D W 5 A C Gilbert is Ex Member of Parliament as also Ex Secretary and President of the Indian Christians Association According to him there was a practice amongst childless christian couples to adopt a child and to his knowledge about 50 such adoptions had taken place He stated that 8 or 10 days after Ajit had been born Smt Maud Datt and Sri E E Datt informed him that they had adopted him He also proved the attestation made on the will said to have been executed by E E Datt wherein Ajit Datt had been described as Sri E E Datt s adopted son

35 D W 6 George Macdonald White the Office Assistant cum Typist in the Boys High School Allahabad was produced to prove the entry in the scholar Register pertaining to Ajit Kumar Bahadur Datt wherein the name of Sri E E Datt 23 Albert Road Allahabad had been shown in the column of parent/guardian of the student

36 On behalf of Ajit Datt reliance was also placed on following documentary evidence —

(i) Ext R 1 the last will and testament of Sri E E Datt dated 27th of November 1959 describing Ajit Datt as his adopted son

(ii) Ext R 2 affidavit of Prem Hemlin (R W 2) stating that Ajit Datt had been taken in adoption by E E Datt and Maud Datt and that a custom prevailed amongst the Christians to adopt children who are to be treated as natural children of the adoptive parents to inherit their properties

(iii) Ext R 3 a postcard dated 1 5 1961 from Norris Hemlin to Smt Maud Datt to show that Ajit was being treated as the son of Smt Maud Datt

(iv) Ext R 4 affidavit of Mrs Promilla J Mahkarjun

(v) Ext R 5 affidavit of Manjula Redcliff (respondent No 4)

(vi) Ext R 7 affidavit of D J Franklin (Respondent No 11)

(vii) Ext R 8 affidavit of Ushi Simeon

(viii) Ext R 9 affidavit of Dr (Mrs) Daisy Myrtle Khan acknowledging the claim of Ajit Datt to succeed to the property of Smt Maud Datt in the capacity of her adopted son

(ix) Ext R 11 Ext R 12 and Ext R 13 Certificates of baptism dated 23 8 1983 from St Joseph Cathedral Allahabad disclosing that the person baptised had been adopted by various persons

(x) Ext R 14 certificate of baptism dated 27 10 1949 showing that Ajit Kumar Bahadur Datt s parents names are Sri E E Datt and Smt Maud Datt and

(xi) Ext R 15 certificate from the Principal of the Boys High School showing father s name of Ajit Kumar Bahadur Datt as E E Datt

37 Plaintiff Mrs Ethel Walters examined as many as four witnesses namely P W 1 Mr Ethel Walters herself P W 2 Rev Dr Chacko Joseph P W 3 Anand Kumar Datt and P W 4 Satyapal Prabhakar These witnesses were produced to rebut the case of Ajit Datt that he had been taken in adoption by Sri and Smt E E Datt and that after adoption he had been brought up by his adoptive parents as their own son P W 3 Anand Kumar Datt is a collateral of E E Datt He also deposed that their ancestor hailed from Bengal and not

from Punjab as claimed by Ajit Datt These witnesses also refuted the claim that there was any custom of adoption amongst Christians giving to the adopted child a status of a natural child of the adoptive parents

38 In support of the case that even after alleged adoption Ajit Datt was not being treated as the son of Sri E E Datt and Smt Maud Datt reliance has been placed on following documents —

(i) Ext P 1 Copy of the entry from the enrolment register of the Allahabad University showing the date of enrolment as 20-1 1967 and the name of Ajit Datt s father has been shown as Sri Archibald Datt

(ii) Ext P 4 the invitation issued at the time of marriage of Ajit Datt by his father in law Mr and Mrs W C Paul wherein the names of Ajit Datt s parents had been mentioned as Mr and Mrs Archibald Datt

(iii) Ext P 3 extract of the marriage register maintained in All Sts Cathedral Church Allahabad, dated 4-6 1976 pertaining to the marriage of Ajit Datt and Anita Paul wherein the name of Ajit Datt s father had been shown as Archibald Datt and not as E E Datt

39 On 6th of September 1984 Sri S S Bhatnagar learned counsel appearing for Sri Ajit Datt admitted that the name of the father of his client was in the records of the Intermediate Education Board for Intermediate Examination as also in the record of his service in the Indian Police Service maintained by the Bihar Government shown as Mr Archibald Datt (see order sheet dated 6th of September 1984)

40 Although the petitioners do not admit either that Sri E E Datt and Smt Maud Datt had taken up the responsibility of bringing up Sri Ajit Datt or that Sri E E Datt and Smt Maud Datt treated Ajit Datt as their own son but then on the basis of the evidence produced in the case I am inclined to accept the case of Sri Ajit Datt that inasmuch as Sri and Smt E E Datt were issueless Sri and Smt Archibald Datt agreed that their issue if male may be brought up by them as their son and that soon after his birth care of Ajit Datt was taken over and he was being looked after by Sri E E Datt and Smt Maud Datt This conclusion is strengthened by the fact that in the baptismal certificate (Ext R 14) and the entry made in the school register of the Boys High School, Allahabad (Ext R 15) the name of Ajit Datt s parents had been shown as E E Datt and Maud Datt It may be that at the time of taking care of Ajit Datt Mr E. E Datt and Mrs Maud Datt intended to bring him up just like their own son the question that shall remain for consideration is as to whether such adoption of Ajit Datt by Sri E E Datt and Maud Datt was an adoption in the technical sense namely that it gave to Ajit Datt the status and privileges of real son of Sri and Smt E E Datt

41 It goes without saying that such a status can be conferred on Sri Ajit Datt only if there be some statutory law or custom having legal force which, in such circumstances confers on the adopted son the privileges of a natural son The oral evidence produced on behalf of Ajit Datt, can lead one to infer that generally there is a practice amongst issueless christians to bring up children of others as their own children but then these witnesses do not speak about any legally recognised custom amongst Christians according to which such children become entitled to the privileges of the real child of the persons adopting them Learned counsel appearing for Ajit Datt invited my attention to the affidavits of Prem Hemlin (R W 1) (Ext R 2) Mrs Promilla J Malikarjun (Ext R 4) Mrs Manjula Redcliff (Ext R 5) Mr D J Franklin (Ext. R 7) Usha Simeon (Ext R 8) and Dr (Mrs) Daisy Myrtle Khan (R W 2) (Ext R 9) in which it has been stated that Ajit Datt had been adopted by Sri E E Datt and Smt Maud Datt as their own son and in some of them it has also been mentioned that according to custom the adopted son is to be treated as the real son Some of the deponents of those affidavits are persons who are in accordance with the provisions contained in the Succession Act, entitled to succeed to the properties of Smt Maud Datt along with Smt Ethel Walters and they admit that as adopted son of Maud Datt Sri Ajit Datt is in preference to them entitled to succeed to her properties It is significant to note that out of deponents of aforementioned affidavits only two of them viz Mr Prem Hemlin (R W 1) and Dr (Mrs) Daisy M Khan (R W 2) have been examined as witnesses in the case There is as contemplated by Order 19 of the Code of Civil Procedure no order of the Court permitting any fact in issue to be

proved by the affidavit of aforementioned witnesses In these circumstances it is not possible to take these affidavits into consideration for any purpose whatsoever

42 It is significant to note that two of the persons who filed such affidavits namely R W 1 Prem Hemlin and R W 2 Dr (Mrs) M Khan mentioning that the adopted son becomes entitled to the privileges of natural son did not say anything about it while giving their evidence before the Court

43 During the course of arguments learned counsel appearing for Ajit Datt relied not only upon the alleged custom concerning adoption prevailing amongst Indian Christians mentioned in the affidavits of the aforementioned witnesses but also upon the custom which according to him prevailed amongst members owing allegiance to Katra Church as also in the family of Sri E E Datt However none of the witnesses produced on behalf of Sri Ajit Datt has mentioned anything about any such special family custom or the custom prevailing amongst Christians owing allegiance to Katra Church

44 The oral evidence produced on behalf of Sri Ajit Datt has thus failed to establish any custom much less a custom which has received legal recognition where under a child adopted by a Christian for being brought up as his own son acquires the status and becomes entitled to the privileges of a natural son

45 During the course of arguments strong reliance was placed on behalf of Ajit Datt on the certificate of Baptism (Ext R 14) showing that Ajit Datt had been baptised as the son of Sri E E Datt and Smt Maud Datt It was urged that inasmuch as Sri Ajit Datt had been baptised as the son of Sri and Smt E E Datt he had to be treated as their natural son I am unable to accept this submission No material has been brought to my notice from which it can be inferred that in the column meant for the names of the parents in the baptismal certificate the names of the natural parents or the person who by fiction of law or under some legally authorised custom is to be treated as parent of the child alone is to be entered and that the name of the person who has merely undertaken to bring up the child and has undertaken the obligation of parenthood cannot be entered therein In Ranbir Karam Singh s case (AIR 1940 All 134) (supra) the Court declined to draw any such inference from the certificate of baptism when it made the following observations —

The argument on behalf of the appellant is that in the column parents names the entry is as followed Adopted by Stephen Karam Singh Surendri Karam Singh and it is urged that this entry must have been made on a statement by Mr and Mrs Karam Singh that they had adopted the boy Although we are not satisfied that the requirements of the law as to the proof of Ex A have been strictly complied with we shall deal with this document on its merits We may also accept the argument that Mr and Mrs Karam Singh in all likelihood told Rev Dinanath that the child to be baptised had been adopted by them It must however be remembered that adoption in the technical legal sense is one thing and the bringing up of a child even with the intention of ultimately giving one s property to that child and loosely describing him as having been adopted is quite another

46 Apart from it it is admitted that at subsequent stage of his educational career as also at the time of entry into the I P S Sri Ajit Datt had described himself as the son of Sri Archibald Datt i e the son of his natural father Both in the invitation card (Ext P 3) in connection with his marriage which was issued by his father in law Mr W C Paul and in the marriage register extract whereof has been filed as Ext P 4 Sri Ajit Datt was described as the son of Sri Archibald Datt I have absolutely no reason to doubt the genuineness of the said invitation and which in this regard stands fully corroborated by the marriage register These facts certainly militate against the case of Sri Ajit Datt that when he was adopted by Sri E F Datt for being brought up as his own son he acquired the legal status of Sri E F Datt s natural son and they make the existence of any such custom as claimed by Sri Ajit Datt improbable

47 The upshot of the aforesaid discussion is that neither is there any statutory law nor has any legally recognised custom prevailing amongst christians been established before me which entitles a christian to adopt a child in the sense of giving to such child the privileges and status of natural child A child who has

been adopted by a Christian for being brought up his/her son does not become entitled to the privileges of a natural son and he does not become entitled to succeed to the properties of the person adopting him Issues Nos 1 2 and 3 framed in the suit shall stand disposed of accordingly

48 It is not disputed that in case Sri Ajit Datt is found not entitled to the privileges of natural son and to succeed to the properties of Smt Maud Datt petitioner Smt Ethel Walters as sister of deceased Smt Maud Flora Datt would be entitled to the Letters of Administration claimed by her Issue No 4 is answered accordingly

49 The petition therefore succeeds and is allowed, but the requisite orders entitling the petitioner to the Letters of Administration prayed for by her shall be made only after she has filed the requisite court fee as also estate duty clearance certificate as required by the Rules Parties to bear their own costs

Petition allowed

1986 ALL L J 21

FULL BENCH

R M SAHAI K P SINGH AND J N DUBEY JJ

Paras Nath Petitioner v Board of Revenue U P Allahabad and others Respondents

Writ Petn Nos 1120 and 882 of 1977 D/ 19 7 1985

U P Urban Areas Zamindari Abolition and Land Reforms Act (9 of 1957), S 19(b) — Sub-tenant of land — Land converted by him into grove with or without permission — He becomes Asami of land

A sub-tenant of land who plants trees either with permission or otherwise and converts land into grove land which continues to be so on the date of vesting then he becomes Asami of it (Para 5)

There is no provision in the U P Urban Areas Z A and LR Act like S 21(2) of the UPZA & LR Act I of 1951 conferring rights of Asami on persons who were occupants of grove land on the date immediately preceding the date of vesting Under the U P Urban Areas ZA & LR Act a person is either Sirdar under S 18 or Asami under S 19 S 17 confers rights of Bhumidhari on a grove holder That is a person covered under S 205 of U P Tenancy Act could claim such right S 205(b)* of U P Tenancy Act specifically debarred a sub-tenant from planting grove As a sub-tenant could not become grove-holder he could not acquire rights of Bhumidhari under S 17 of U P Urban Areas ZA & LR Act S 18(vii) confers rights of Sirdar on a sub-tenant referred to in S 47(4) It applied to those sub-tenants who held land under a valid lease executed on or after 1902 and their lessor that is the tenant either died leaving without any heir entitled to inherit or his tenancy stood extinguished by surrender or abandonment But a sub-tenant of a permanent tenure holder and fixed rate tenant was not granted this protection Therefore a sub-tenant of fixed rate tenant even if he satisfied other conditions under S 47(4) did not become Sirdar under S 18 Another class of sub-tenants who were made Sirdar were referred in S 18(2)(b) This is a general clause under which every person who was a sub-tenant of any land on the date of vesting becomes a Sirdar unless he was a sub-tenant referred to in the proviso to S 27(3) of U P Tenancy (Amendment) Act 1947 or the land was grove land Therefore if a person is a sub-tenant of grove land then he could not become Sirdar It is these excepted class of persons from cl (b) of sub-sec (2) of S 18 who have been conferred rights of Asami under S 19(1)(b) and (c) of the Act But if it is held that a sub-tenant continues to be sub-tenant of land then it shall result in conferring on him rights of Sirdar which is a better right under Z A Act and that would be anomalous and even contrary to the scheme of the UPZA & LR Act of 1951 (Para 5)

Cases Referred	Chronological	Paras
1974 Unreported Rev Cas 317		3
1974 Unreported Rev Cas 318		1 3
1969 RD 407		3
AIR 1966 SC 1191		3
1963 RD 221		4
1958 All LJ 904	ILR (1958) 2 All 912	4

Sankatha Rai for Petitioner G N Verma Standing Counsel, for Respondents

---

KC/KC/G217/85/VVG

R M SAHAI, J — Having felt doubtful about the principle of law laid down in Lalit Tewari v Genda Tewari 1974 Unreported Rev Cas 318 that a sub-tenant of a fixed rate tenant with specific authorisation to plant grove would become Asami u/s 21(1)(b) of UPZA & LR Act of 1951 a provision in pari materia with S 19(b) of U P Urban ZA & LR Act (hereinafter referred to as Act) one of us (Hon ble K P Singh J) referred this petition directed against order of Board of Revenue and others arising out of proceedings started for eviction u/s 202 of the Act for decision by a larger bench

2 Prior to narration of facts it may be examined who are those persons who would become Asamis under sub-cl (b) of Section 19 of Act But before doing so it would be better if import of similar provision in ZA & LR Act (Act I of 1951) is understood It is well known that when Zamindari was abolished the Legislature substituted seven class of tenants under U P Tenancy Act besides Sir and Khudkast holder with three tenure holders known as Bhumidhar Sirdar and Asami Bhumidhari rights were conferred on these tenants who under U P Tenancy Act could be termed as superior class of tenants Under this Act also their status was maintained by granting them absolute rights including right to transfer gift or will Sirdari rights were conferred on tenants who were to say second grade tenants The Act while granting them absolute rights in land did not confer any right of transfer etc The third category of tenants consisted of those persons to whom the land was let out and they were known as sub-tenants tenants of sir or non occupancy tenants They had no security of tenure and were exposed to ejectment Out of this category the Zamindari Abolition Act conferred rights of Adhivasi on tenants of Sir sub-tenants recorded occupants of 1356 and those who were in cultivatory possession in 1359 In 1954 even this class was made sirdar They were rendered immune from eviction and were entitled to retain possession And in case they were not in possession they were entitled to regain possession under Section 232 of Zamindari Abolition Act But if they held land of a person who was disabled within the meaning of Sec 157 of Zamindari Abolition Act then they were conferred rights of Asami u/s 21 and were liable to ejectment But no sub-tenant or recorded occupant of grove land could become adhivasi Other non occupancy tenants who were tenants of such lands in which hereditary rights could not accrue under Tenancy Act because they were lands of public utility or pasture land or land covered with water etc in which casual and seasoned cultivation was done or were mortgagees of superior tenants or non occupancy tenants of intermediary grove land or sub-tenants of grove land were conferred rights of asami u/s 21 of Zamindari Abolition Act Such persons were liable to ejectment When Urban Area Zamindari Abolition Act was enacted the same scheme was adhered to Although the class of Adhivasis was obliterated but by separate sub sec (2) added to Section 19 all those persons who were tenants of Sir or sub-tenants were made Sirdars Thus sub-section like S 20 of Z A Act I of 1951 provided that a person shall become Sirdar only if he did not become Asami under S 19 Section 19 of the Act like S 21 of Zamindari Abolition Act confers right of Asami on a person covered in it irrespective of other provisions of the Act Therefore this section has an overriding effect and any person covered in various sub-clauses of this section shall be conferred with right of Asami The opening part of the section reads as under —

Notwithstanding anything contained in this Act every person who on the date immediately preceding date of vesting occupied or held in an Agricultural Area as

(a)

(b) a sub-tenant of grove land

(c) to (h)

shall be deemed to be an Asami thereof

3 In order to attract applicability of this section a person has to satisfy that he was (a) a sub-tenant (b) of grove land (c) on the date of vesting (d) and he occupied or held the land (e) in agricultural area Agricultural area has been defined in sub-sec (1) of S 2 of the Act The procedure of its demarcation etc has been given in Chap II of the Act The land in which rights can accrue under the Act has to

be situated in this area The date of vesting in respect of territory mentioned in part A of the Schedule included in a Municipality is 30th June 1954 Expression occupied or held is associated with being in possession actual or constructive under some right The word held used in Section 9 of Z A Act has been interpreted by Supreme Court to mean lawfully held See Buddhu Singh v Bari Bux 1969 R D 407 K K Handique v The Member Board of Agriculture Income-tax Assam AIR 1966 SC 1191 It excludes trespasser from it It has to be understood in this Act in same sense The word occupy means possession But it having been used with word held it takes its colour from it consequently both these words have to be understood as denoting a person who has been in lawful possession Groveland has to be understood according to sub-sec (16) of S 3 of the Act in the sense it was understood in U P Tenancy Act which meant any specific piece of land in Mohal or Mohals having plantation thereon with such number that they preclude or when full grown will preclude the land or considerable portion thereof from the use primarily for any other purpose in the column of grove Grove holder is defined in S 205 of U P Tenancy Act as a person who has planted a grove on land which was let or granted to him by the landlord for the purpose of planting a grove Another class of persons who could become grove holders were those who planted grove with written permission of the landlord or were entitled to plant on land let out to them in accordance with local customs But from this class were excluded sub tenant permanent tenure holders fixed rate tenants etc So grove land and grove holder under U P Tenancy Act were two different concepts The one could not be confused with another Grove land as a matter of law may not present any difficulty But as a fact it depended on number of trees their location and nature etc Sub-tenant has not been defined in the Act But by virtue of sub-sec (16) of S 2 of the Act it has to be understood in the same sense in which it was understood under U P Tenancy Act In that it was defined in sub-sec (22) of S 3 as a person who holds land from tenant thereof other than a permanent tenure holder or from a grove holder or from a rent free grantee or from a grantee at favourable rate of rent and by whom the rent is or but for a contract express or implied would be payable by a person who was entitled to let out That is he must have been inducted over the land by a person who was entitled under U P Tenancy Act to let out Sub-sec (22) S 3 of Tenancy Act specifically debarred certain persons from inducting a sub-tenant But a fixed rate tenant did not suffer from this disability He could therefore let out land or grove land to a sub-tenant On the (Sic) sub-tenant to whom the land was let out could plant trees either under permission or otherwise in such number that cultivation was precluded from it and it becomes grove land Where grove was planted with permission the sub-tenant did not become grove holder He continued to be sub-tenant as he had not committed breach of any term of his lease That was the situation in Lalit Tewari s case (1974 Unreported Rev Cas 318) (supra) The sub lessee was specifically authorised by the lease itself to plant grove therefore the Division Bench held the lessee to be a sub-tenant of grove land But what happens when the sub-tenant in contravention of terms of lease or without permission of lessor plants the grove Does he become a sub-tenant of grove land? or to put it differently could a person who was inducted as sub-tenant continue to be sub-tenant and become a sub tenant of grove land by planting trees on it? In Shyam Behari v Consolidation Officer 1974 U R C 317 the trees were planted by the sub-tenants presumably without permission of the land holder It was held that plantation of trees did not extinguish tenancy and therefore he continued to be sub-tenant of land To examine its correctness it has to be seen if a sub-tenant could plant trees or not and its effect Did the sub-tenancy stand extinguished by planting of trees? Under S 3(11) of Agra Tenancy Act planting of trees by a tenant amounted to improvement But this was omitted from S 3(8) of U P Tenancy Act Therefore planting of trees by a tenant in the holding ceased to be improvement S 80 however permitted a tenant other than a non occupancy tenant to plant trees on his holding A sub-tenant, therefore was debarred from planting trees But if he did so that is acted contrary to provisions of S 80 then the Act contemplated his ejectment as it amounted to acting in a manner detrimental to land or amounted to violating condition of the lease within meaning of S 172 But it did not result

in extinction of his sub tenancy It only rendered him liable to ejectment as sub-tenant and not as trespasser If it is held that tenancy extinguished or possession of such a tenant became contrary to law then such a person could acquire rights u/s 180(2) of U P Tenancy Act And that would be contrary to scheme of the Act Even a tenant by planting trees in such a manner as to exclude cultivation did not become grove holder obviously because by own act or omission a tenant could not acquire higher or better rights How could a sub-tenant then become hereditary tenant u/s 180(2) The act of planting trees therefore does not extinguish the tenancy nor it brings into any change in his status and he continues to be sub-tenant liable to ejectment

4 In Ram Dulare Singh v Sukkhoo Ram 1963 R D 221 it was held by a Full Bench of this Court that a sub tenant did not cease to be a sub-tenant by efflux of time It was held that if a sub-tenant had a right to remain in possession it could be only in one capacity and that of a sub-tenant The Bench observed the interest of a tenant was not extinguished by efflux of the time for which the lease was granted to him The expiry of the period of the lease had no effect on his tenancy rights Section 48 provided that when the interest of a sub tenant was extinguished he was bound to vacate his holding There is no such provision in respect of extinction of the interest of a tenant A sub tenant s interest also was extinguished in the manner laid down in S 45 i e it was not extinguished by efflux of the time for which the sub-lease was granted to him The period of the sub-lease might have expired but he continued to be sub-tenant so long as he did not die heirless did not surrender or abandon the holding was not ejected in execution of a decree or order of a Court etc The only effect of the efflux of time was that he became liable to be ejected under S 175(b) but so long as he was not ejected he continued to be a sub-tenant because his interest was not extinguished It made no difference that he was required on extinction of his interest to vacate his holding whereas a tenant was not required to vacate his holding on extinction of his interest because the question whether the holding should be vacated or not did not arise so long as the interest was not extinguished As far as the question whether the interest was extinguished or not the U P Tenancy Act made no difference between interest of a tenant and interest of a sub tenant In Chaudhary Mohd M A Khan v Board of Revenue 1958 All LJ 904 it was held that a sub-tenant even after ejectment in execution of decree continues to be sub tenant

5 For deciding nature of right a person may acquire in grove land under the Act it is the provision of Ss 17 18 and 19 which have to be read together It may be pointed out that there is no provision in the Act like sub sec (2) of S 21 of U P Z A & L R Act I of 1951 conferring rights of Asami on persons who were occupants of grove land on the date immediately preceding the date of vesting Under the Act a person is either Sirdar under section 18 or Asami under S 19 Section 17 confers rights of Bhumidhari on a grove holder That is a person covered under S 205 of U P Tenancy Act could claim such right As has been seen earlier sub cl (b) of S 205 specifically debarred a sub tenant from planting grove As a sub-tenant could not become grove holder he could not acquire rights of Bhumidhari u/s 17 Section 18 (vii) confers rights of Sirdar on a sub-tenant referred to in sub-sec (4) of S 47 It applied to those sub-tenants who held land under a valid lease executed on or after 1902 and their lessor that is the tenant either died leaving without any heir entitled to inherit or his tenancy stood extinguished by surrender or abandonment But a sub-tenant of a permanent tenure holder and fixed rate tenant was not granted this protection Therefore a sub-tenant of fixed rate tenant even if he s atisfied other conditions of sub sec (4) of S 47 did not become Sirdar under section 18 Another class of sub-tenants who were made Sirdar were referred in sub cl (b) of sub-sec (2) of S 18 This is a general clause under which every person who was a sub-tenant of any land on the date of vesting became a Sirdar unless he was a sub-tenant referred to in the proviso to sub sec (3) of S 27 of U P Tenancy (Amendment) Act 1947 or the land was grove land Therefore if a person is a sub-tenant of grove land then he could not become Sirdar It is these excepted class of persons from clause (b) of sub-sec (2) of S 18 who have been conferred rights of Asami under S 19(1)(b) and (c) of the Act But if it is held that a sub-tenant continues to be sub-tenant of land then it shall result in conferring on him

rights of Sirdar which is a better right under Z A Act And that would be anomalous as if the land due to planting of trees stands converted and becomes grove land on the date of vesting then how could the sub-tenant be deemed as sub tenant of land It would also be contrary to scheme of Z A Act as a sub tenant or non occupancy tenant and even an occupier in Z A Act of 1951 of grove land have been given inferior rights of Asami If it is accepted that despite change in nature of land the sub-tenant continued to be sub-tenant of land then the sub-tenant shall become Sirdar Therefore a sub-tenant of land who plants trees either with permission or otherwise and converts land into grove land which continues to be so on the date of vesting then he becomes Asami of it

6 On law as explained above it may now be examined whether on facts found the petitioner is entitled to any relief Paras Nath and Kedar Nath were fixed rate tenants According to them they had planted grove on plots 1367/1 1367/2 and 1371/1 and these plots were let out to father of Nanak Chand and Raj Deo According to them they being sub tenants of grove land were liable to ejectment under section 202 read with S 19(b) of the Act Nanak Chand contested the suit It was claimed that land was sub-let to his father and his father planted the trees over the disputed land Therefore they were Sirdars Later on the written statement was amended and it was claimed that trees were planted in plots 1367/1 and 1367/2 and not plot No 1371/1 There was thus divergence on the controversy of plantation of grove but no issue was framed on it because according to trial Court it was immaterial whether grove was planted by plaintiffs or defendants and what was material was whether land was grove land on the date of vesting or not According to trial Court as land was grove land and Nanak Chand was its sub-tenant he became an Asami In appeal the order was modified as there was ample documentary evidence to prove that plots Nos 1367/1 and 1367/2 were grove land on relevant date It was held that as these plots were grove the opposite parties were its Asamis They however did not find that there was any document from which it could be established that plot No 1371/1 was grove The Board of Revenue in Second Appeal endorsed the finding of Additional Commissioner From recital in the order of Additional Commissioner and Board of Revenue it appears Paras Nath had filed a suit under S 175 U P Tenancy Act for ejectment of Nanak Chand But this suit was abated due to enforcement of Zamindari Abolition Act It is not clear whether this suit was filed because the term of sub-tenancy had expired or because landholder terminated the lease due to plantation of trees

7 Some dispute was raised in respect of plot No 1371/1 The Courts below appeared to have assumed that there were no trees standing over it The trial Court did not record any clear finding The Additional Commissioner and the Board of Revenue were under erroneous impression In any case as the dispute is being referred to Additional Commissioner to be decided again on facts and then to apply law as indicated above the controversy in respect of this plot shall also be decided again

8 For the reasons stated above both the Writ petitions succeed and are allowed The order of Board of Revenue and the Additional Commissioner are quashed The Additional Commissioner shall decide the appeal afresh Parties shall bear their own costs

Petitions allowed

1986 ALL L J 25

B D AGARWAL J

Raghunath and others Petitioners v The District Judge Mirzapur and others Respondents

Civil Misc Writ Petn No 8031 of 1983 D/ 17 4 1985

(A) U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 331 — Bar of jurisdiction of Civil Court — Suit for cancellation of sale deed on ground that it was obtained by fraud — Allegation in plaint suggesting that transaction was voidable — Jurisdiction lies on Civil Court to entertain suit — (Civil P C (5 of 1908) S 9) (Para 3)

(B) U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 171(f) — Civil

P C (5 of 1908), O 22 R 3 and S 2(11) — Suit — Abatement — Death of one of plaintiffs, a Bhumidar during pendency of his suit for cancellation of sale deeds — One deed relating to sale of property gifted to co-plaintiff married daughter — Plaintiff leaving behind his brother and married daughter (co-plaintiff) — Brother being preferential heir under S 171(f) of Act, right to pursue the suit in respect of property of deceased devolves upon him only — Brother making no application to pursue the matter — Suit abates as regards sale deed relating to property of deceased — Daughter cannot pursue the matter even if she is the legal representative as an intermeddler (Para 5)

Cases Referred	Chronological	Paras
1983 All LJ 1378	1983 All CJ 617	3
AIR 1962 SC 232		6, 7
AIR 1947 Mad 165		9
AIR 1943 Pat 433		9
AIR 1939 Lah 321		6
AIR 1939 Pat 117		6
AIR 1930 Mad 593		9
AIR 1924 All 717		6
AIR 1924 Lah 45		9
(1913) 19 Ind Cas 255 (All)		9

S P Srivastava for Petitioners Sankath i Rai and Standing Counsel for Respondents

ORDER — One Deo Narain was the bhumidhar of the land in dispute On September 17 1976 and April 24 1980 there were registered deeds of sale executed purporting to be by Deo Narain aforesaid in favour of the petitioners The deed of sale dated September 17 1976 pertains to land situate in village Atraila Shiv Gulam the other deed of sale is in respect of certain plots situate in village Babura Bhairon Dayal Deo Narain along with his daughter impleaded as respondent 3 namely Smt Bhagwanti instituted Original Suit No 161 of 1981 in the Court of Munsif Mirzapur for cancellation of these deeds of sale on various grounds Deo Narain died during the pendency of the suit on June 30 1981 He died leaving his brother Jag Deo but without the wife or a male issue The question arose whether upon his death the suit had abated and it was also pleaded for the petitioners (defendants) that the civil Court did not have jurisdiction to try the suit Preliminary issues were framed by the trial Court on this point Both these issues were decided by the trial Court against the petitioners on July 20 1982 the revision filed by the petitioners was dismissed on March 16 1983 Aggrieved the petitioners (defendants) have approached this Court

2 Learned counsel for the petitioners raised twofold contention in support of the petition It was submitted in the first place that on the death of Deo Narain his brother being the preferential heir under S 171(f) U P Zamindari Abolition & Land Reforms Act (Act No 1 of 1951) in comparison to married daughter who is placed under cl (g) and there being no application from the brother of the deceased seeking his substitution as a legal representative of the deceased the suit could not be maintained by the surviving plaintiff namely Smt Bhagwanti The other contention is that there being averment in para 7 of the plaint to the effect that the deed of sale dated April 24 1980 may have been obtained from some imposter by the petitioners the jurisdiction lies in revenue Court since on that account the transaction could be void and not voidable Both these contentions have been countered from the other side

3 Taking up the issue of jurisdiction first there can be no dispute that for adjudication thereof the averments contained in the plaint have to be taken in their entirety The effort of the Court has to be to gather the pith and substance of what is alleged in the plaint Considered in the light thereof it would be observed that in paras 3 4 5 and 6 of the plaint there is allegation in substance to the effect that Deo Narain was old and infirm that his wife had predeceased that he had no male issue that he reposed confidence in the petitioners and that the transaction impugned was secured taking advantage of his physical and mental infirmity No doubt in para 7 it has been added that it is rumoured that some imposter was set up to execute the deed of sale dated April 24 1980 But it would not be reasonable to divorce the averment contained in para 7 from the rest of the plaint and to hold on the basis thereof alone that the jurisdiction rests in the revenue Court Learned counsel Sri S P Srivastava has cited in support of his contention my decision in Khamani Ram v District Judge Budaun 1983 All CJ 617 (1983 All LJ 1378) That decision may have bee attracted in the instant case provided on the

pith and substance of the plaint it could be said that the transaction impugned is claimed to be void It is not difficult to discern that in the present state of pleading the predominant theme is that the transaction is vitiated on account of fraud or undue influence exercised against the executant It is not only that para 7 of the plaint is confined to one out of the two impugned deeds of sale the rest of the averments too suggest that the plaintiffs case has been that the transaction is voidable The jurisdiction consequently lies in such a case according to Khamam Ram s case (supra) as well in the civil Court

4 As regards the other submission of Sri Srivastava for the petitioners (Sic) O XXII R 3 C P C runs as under

3 Procedure in case of death of one of several plaintiffs or of sole plaintiff —

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives the Court on an application made in that behalf shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit

(2) Where within the time limited by law no application is made under sub-rule (1) the suit shall abate so far as the deceased plaintiff is concerned and on the application of the defendant the Court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff

5 Of the two plaintiffs to the suit Deo Narain is dead The right to sue subsequent to his death cannot be claimed to survive to respondent 3 alone In so far as the land other than that covered under the deed of gift dated 13th October 1980 is concerned the legal heir in view of S 171(f) U P Act No 1 of 1951 is Jagdeo the brother of Deo Narain deceased and not respondent 3 (who is a married daughter of Deo Narain and is placed in cl (g) of S 171) The deed of gift is in respect only of part of certain plots in village Babura Bhainon Dayal annexure 3 to the writ petition This does not at all pertain to the land in the other village In para 1 of the plaint this is the only deed of gift referred to There is none else alleged in any part of the pleadings for that matter It follows that upon the death of Deo Narain the right to sue for cancellation of deed of sale dated 17th September 1976 in respect of the land in village Atraila Shiv Gulam devolves upon his brother being a lawful heir and not respondent 3 There is no application by or on behalf of the brother to pursue the matter In accordance with O XXII R 3(2) therefore the suit abates so far as the deceased plaintiff is concerned in regard to the cancellation claimed of the deed of sale dated September 17 1976 The right of respondent 3 the co plaintiff to sue is confined to her share in the gifted land to the extent the same has been transferred by sale under the deed executed on April 24 1980

6 For respondent 3 learned counsel urged that she is legal representative of the deceased within the meaning of S 2(11) Civil P C being an intermeddler In this capacity however she cannot have preference over the lawful heir who is the person in whom the right to sue in respect of the non gifted land survives Deo Narain asserted his right to sue in capacity as bhumidhar of that land Upon his death the bhumidhar would be his brother as per S 171(f) U P Act I of 1951 and not respondent 3 The definition given to the expression legal representative in S 2(11) merely means that a person who intermeddles with the estate may also be treated as the legal representative It does not mean that a person who intermeddles with the estate of the deceased is to be placed in preference to a person who is found to be the true legal representative of the deceased s property The law is settled that the inclusion of a person who intermeddles with the property of a deceased person into the definition cannot affect substantive right of the lawful heirs In Lalsa Rai v Udit Rai (AIR 1924 All 717) it was held —

It is quite true that when a person intermeddles with the property of the deceased he is a legal representative of the deceased for the purposes of procedure to the extent of the property with which he has intermeddled but I do not see any principle of law which makes him the representative of the deceased so far as succession to the property of the deceased is concerned The definition of legal representative in the Code of Civil Procedure

is only for the purposes of procedure in instituting and defending suits Any definition for the purposes of adjective law cannot alter the rule of substantive law and it is not easy to understand how the mere fact that an intermeddler is joined as a party to the suit for recovery of possession can make a decree in that suit in any way binding on the real heir who is not a party to that suit and who later on gets a decree against the intermeddler declaring his superior right

The same view has been taken in Suraj Prasad v Must Lukhar Kuer AIR 1939 Pat 117 and Jai Kishan Dass v Karimuddin AIR 1939 Lah 321 In the last mentioned case it is observed also that a person who intermeddles with the property of the deceased person has been probably included in the definition of the legal representative in the Civil P C merely to enable persons who wish to obtain relief against the property to proceed against it in the hands of such a person As would presently appear this finds support from the observations of the Supreme Court in Andhra Bank Ltd v R Srinivasan AIR 1962 SC 232 cited for the respondents The right to sue for the purposes of O XXII R 3(2) cannot in my opinion be claimed to adhere in an intermeddler in preference to the lawful heir of the deceased under the relevant rule of succession and viewed in the light thereof it may not be doubted that the suit in the present abates so far as the deceased plaintiff is concerned

7 Sri Sankatha Rai learned counsel for the respondents relying on Andhra Bank Ltd v R Srinivasan AIR 1962 SC 232 at P 239 strenuously argued that a person who represents only a part of the estate of the deceased is also a legal representative within the meaning of S 2(11) Civil P C This provision is undoubted The contention in the aforementioned case was that the respondents who were in possession of different pieces of property belonging to the deceased Rai Bahadur the judgment debtor under the Will executed by him could not be his legal representatives The Supreme Court repelled this observing that the object of widening the scope of the expression legal representative which S 2(11) is intended to achieve would be frustrated if this interpretation were accepted This moreover is not consistent with the position that persons who intermeddle with a part of the estate are legal representatives In the words of the Supreme Court —

Besides if such a construction is accepted it would be so easy for the estate of a deceased to escape its legitimate liability to pay the debts of a deceased debtor only if the debtor takes the precaution making several legacies to different persons by his Will

This decision also is a clear pointer in the direction that the width of the dictionary meaning assigned to the expression legal representative in S 2(11) is aimed to rope in those also who intermeddle with different parcels of the estate of the deceased in order that no part thereof escapes being brought within the clutches of a decree This however is not the question before us in the present case The issue is not as to whether respondent 3 is a legal representative of Deo Narain deceased plaintiff I assuming that she is the question is whether right to sue survives to her within the meaning of O 22 R 3(2) C P C in respect of land other than her share in the land gifted to her and her sister by the father on 13th October 1980 If it is manifest the right to sue in respect thereof inheres in the brother of the deceased who does not choose to pursue the suit it is plain that as against him respondent 3 cannot assert her claim as a legal representative The respondents therefore do not derive assistance from the decision in Andhra Bank Ltd (AIR 1962 SC 232) (supra)

8 The submission for the respondents that cause of action for purposes of O XXII R 3(2) C P C be construed as merely the relief sought for cancellation of the two deeds of sale is also devoid of merit The right to sue which Deo Narain made the basis in the suit was the assertion that he is bhumidhar of the land in dispute part of which he gifted to his two daughters That indeed constitutes the soul of the cause of action set up by him Therefore on his death the right to sue would devolve upon one who can claim to have become bhumidhar of the said land and in view of the rule of succession it would be the brother and not the married daughter vide S 171 Act I of 1951 referred to above This is not decidme the dispute upon merit as the respondents counsel apprehends but determining whether the suit has within the meaning of O XXII R 3(2) abated in so far as the deceased plaintiff is concerned

9 Learned counsel urged also that a person who is impleaded as a legal representative of deceased party can raise only such objection as could have been taken by the deceased party himself He is confined to the pleadings and the case of the plaintiff whose representative he is and cannot agitate in that suit his own claim against the other plaintiff in the case though he may do so in any other proceeding This proposition is equally well settled and not disputed from the other side though the counsel cited authorities also in aid thereof vide (1913) 19 Ind Cas 255 (All) (Ismail Jolaha v Jagannath) V T Elaya Pillai v J R Goundan AIR 1947 Mad 165 Kameshwar Singh v Ch Rajbanshi Singh AIR 1943 Pat 433 Gulli v Sawan AIR 1924 Lah 45 Mohd Naina Maracavi v U Ammal AIR 1930 Mad 593 The proposition is hardly of relevance to be of any avail to the respondents The attack against the right claimed by the surviving plaintiff respondent 3 to pursue the suit in respect of land other than her gifted share is founded entirely upon what is pleaded in the instant case at the instance of the deceased plaintiff

10 For the discussion in the above I find that the civil court has jurisdiction to try the suit The suit has abated under O XXII R 3(2) Civil P C so far as the deceased plaintiff is concerned The surviving plaintiff respondent 3 can pursue it in respect only of her share in the land claimed to have been gifted to her by the deceased father on 13th October 1980 and to the extent it forms the subject matter of the impugned deed of sale dated April 24 1980 The petition succeeds therefore in part and is allowed accordingly In the circumstances there shall be no order as to costs

Petition partly allowed

1986 ALL L J 29

I P SINGH AND R P SHUKLA JJ

Prem Singh Appellant v State of U P Respondent

Criminal Appeal No 2114 of 1977 D/ 14 3 1985

Penal Code (45 of 1860), Ss 96, 299 and 300 — Murder case — Self defence — Plea when acceptable

The right of self defence would have accrued to the appellant only if he had an apprehension that either death or at least grievous hurt would be caused to him by the deceased The evidence on record shows that the deceased was bare handed while the appellant was holding a Danda The mere act of chasing in an effect to catch hold of the appellant would not have been sufficient by any stretch of imagination to raise an apprehension in the mind of the appellant that he would either be killed or made to suffer grievous hurt by the deceased The little apprehension of being caught hold of could be repelled by him by using the Danda against the deceased There was no justification in his bringing out pistol and firing it at the deceased causing his death (Para 10)

V B Singh for Appellant Dy Govt Advocate for Respondent

I P SINGH, J — Prem Singh convict appellant has preferred this appeal against the judgment and order of Sri S B L Kackar Sessions Judge Hamirpur dt 30 7 1977 convicting and sentencing the appellant under S 302 I P C to imprisonment for life and under S 323 I P C to two months R I Both the sentences to run concurrently

2 The prosecution case is that Mansa Ram (P W 3) Gopali (P W 1) and Raja Ram are three brothers living in village Mawai Police Station Rath district Hamirpur Ram Kumar (deceased) was the son of Gopali (P W 1) and appellant Prem Singh is the son of Raja Ram and his wife Smt Tulsa Rani (P W 4)

3 The prosecution further case is that appellant Prem Singh and his wife were not on good terms with his parents Raja Ram and Smt Tulsa Rani (P W 4) They had been forced to live elsewhere though a Kotha was allotted to them in the house of the appellant

4 On 3 7 1976 at about 3 00 p m Smt Tulsa Rani (P W 4) had gone to that particular Kotha inside the residential premises of the appellant to get some seeds A dispute arose between Smt Tulsa Rani (P W 4) and her daughter in law i e the wife of the appellant The appellant was also present there and he took sides with his own wife In the process he happened to beat his mother Smt Tulsa R with a Danda She came out of the house

weeping The appellant also followed her and even beat her with a Danda outside the house This attracted Gopah (P W 1) Mansa Ram (P W 3) Ram Kumar (deceased) and others They objected to the behaviour of the appellant in beating his own mother Exchange of hot words and abuses took place Ram Kumar (deceased) advanced and pushed the appellant to save his aunt The appellant ran inside his own house The above mentioned witnesses followed him there The appellant happened to climb over the stair case Ram Kumar tried to catch hold of him The appellant took out a pistol from the phenth of his pajama and fired a shot at Ram Kumar which struck him at his neck He fell down The appellant ran away

5 The deceased in an injured condition was taken to the hospital and by the time they reached there he breathed his last

6 The first information report of this incident was lodged by Gopah complamant (P W 1) at Police Station Rath five miles away the same day at 5 25 p m

7 The post mortem examination of Ram Kumar (deceased) was conducted by Dr H C Pandey Medical Officer In charge Male Hospital Rath on 4-7 1976 at 11 45 a m The probable time since death was about eighteen hours This fits in with the alleged hour of the occurrence The deceased had an antemortem injury in the form of a gun shot wound of entrance 2 8 cm × 1 5 cm on left side of neck 7 cm from mid plane and 6 cm below lobule of left ear The internal examination revealed fracture of 5th cervical vertebra below the above injury There was a fracture of 5th rib also There was a hole in the lobe of the right lung through and through Dr Pandey also took out a pellet from the right side chest In the opinion of the doctor the death was due to shock and haemorrhage as a result of the above mentioned injury In the opinion of the doctor the above injury was sufficient in the ordinary course of nature to cause death

8 The appellant in the course of statement under S 313 Cr P C almost admitted all the above facts put forward by the prosecution except that he ever beat his mother or that he fired a shot at the deceased According to him when he was chased by the deceased inside the house three guests were sitting inside his house and it was one of those guests who fired at the deceased However he did not lead any evidence in defence

9 The prosecution examined three eye witnesses namely Gopah (P W 1) Mansa Ram (P W 3) and Smt Tulsa Rani (P W 4) Before we deal with the evidence of the first two witnesses namely Gopah and Mansa Ram we would like to dispose of the evidence of Smt Tulsa Rani (P W 4) She in her statement supported the prosecution version except that the appellant had beaten her She maintained that she had not witnessed the incident in which Ram Kumar was murdered In other words she did not support the prosecution that the appellant had fired shot at the deceased For this the prosecution got her declared hostile

The contention of the learned counsel for the appellant is that since foundation of the entire incident is the initial marpit of Smt Tulsa Rani (P W 4) by the appellant and when she has stated that the appellant had not beaten her the prosecution case has no legs to stand and this fact alone should merit acquittal of the appellant However there is no denying the fact that Smt Tulsa Rani is the mother of the appellant In the initial stage of the investigation she was also subjected to medical examination and the doctor had found three red bruises ranging from 4 cm × 1 5 cm to 5 5 cm × 1 5 cm on various parts of her body The injuries were simple and at the time of her examination i e at 9 00 a m of 4 7 1976 they were certified to be of duration within one day This also coincides with the alleged hour of the occurrence It is also to be noted that at the time of getting the appellant released on bail she had filed her affidavit wherein she had asserted that when the dispute was going on two persons unknown to her had intervened and one of them had fired the shot killing Ram Kumar This affidavit is certainly inconsistent with her evidence in the court below wherein she stated that she had not witnessed the incident in which Ram Kumar was killed She resiled from her earlier statement in the affidavit that one of the two persons who had intervened in the dispute had fired shot killing Ram Kumar One can well realise that the mother in her had taken hold of her in putting in that affidavit to help her son the appellant In the court she did not support the prosecution version that the

appellant beat her or fired at the deceased At any rate we would not place much reliance in what she has to say in the matter This is so because there are other two eye witnesses namely Gopali (P W 1) and Mansa Ram (P W 3)

It is worth noting that Mansa Ram (P W 3) is equally related as first degree uncle both to the deceased and the appellant No circumstance has been pointed out to our satisfaction by the learned counsel for the appellant as to why Mansa Ram should go against the appellant Both Gopali and Mansa Ram have fully corroborated the prosecution version in all its details They have emphatically stated in the concluding part of their statements that the appellant ran into his house followed by the deceased who wanted to catch hold of him They and other witnesses who had assembled outside the house had also followed them into the house Both these witnesses maintained that they saw that the appellant had climbed over the stair case and when Ram Kumar was trying to catch hold of him the appellant took out pistol from the Phenth of the Pajama and fired a shot at Ram Kumar deceased which struck him at his neck and he fell down There is no reason why their statements should not be believed The mere fact that they are related to the deceased would be no consideration to disbelieve them because they are also closely related to the appellant

10 Learned counsel for the appellant has laid much stress on the point that even if the appellant has not taken the plea of self defence yet the record bears out that plea and he therefore may be given benefit of the same The only facts in this connection stressed by the learned counsel are that the evidence shows that Ram Kumar (deceased) had once pushed the appellant and then had chased the appellant inside the house in order to catch him It was argued that these overt acts on the part of the deceased justified the overt act of the appellant in shooting him down in his self defence But we are not impressed by this argument The right of self defence would have accrued to the appellant only if he had an apprehension that either death or atleast grievous hurt would be caused to him by the deceased The evidence on record shows that the deceased was bare handed while the appellant was holding a Danda. The mere act of chasing in an effort to catch hold of the appellant in our view would not have been sufficient by any stretch of imagination to raise an apprehension in the mind of the appellant that he would either be killed or made to suffer grievous hurt by the deceased The little apprehension of being caught hold of could be repelled by him by using the Danda against the deceased There was no justification in his bringing out pistol and firing it at the deceased causing his death In this connection, we may also refer to the suggestion given to Gopali and Mansa Ram that Ram Kumar (deceased) while chasing him was carrying a Ballam But this aspect of the case was never deposed by the appellant in his statement under S 313 Cr P C

11 As a result of overall discussion of the evidence and circumstances of the case we are of the opinion that this appeal has no force The appeal must fail

12 The appeal is dismissed The judgment and order of the court below are confirmed The conviction and sentence awarded are upheld The appellant is on bail He shall surrender to his bail bonds to serve out the sentence He shall be taken into custody

Appeal dismissed

1986 ALL L J 31

B D AGARWAL J

Banaras Hindu University Appellant v Gokul Das Nagar and another Respondents

First Appeal No 240 of 1972 D/ 17 7 1985*

(A) Civil P C (5 of 1908) O 22 R 4 — Survival of right to sue against surviving defendants — Defendants to joint tortfeasors — Appeal abating against one defendant — No abatement against others

A University filed the instant suit against T (its treasurer) and C (its cashier) for the recovery of amount found short after due audit The suit was dismissed by the trial Court

*Against judgment of O P Saxena 1st Addl Dist Judge Varanasi D/ 12 1 1972

T died during the pendency of appeal Appeal against T abated as his legal representatives were not brought on record within the limitation period The issue was whether the appeal abated against C also

Held that the abatement of the appeal against T cannot in itself serve to make the appeal abated in so far as C is concerned (Para 6)

Upon the pleadings of the parties and the evidence placed on the record the case is not of joint tortfeasors Persons are said to be joint tortfeasors when their separate shares in the commission of the tort are done in furtherance of a common design It is nowhere averred in the case that the two defendants acted in concert or that they conspired to embezzle The case set up by the University is that defalcation was made by C and T was guilty of negligence in not conforming to the Account Rules The breaches of duty by the two defendants in their respective sphere caused allegedly single injury to the appellant The appellant is entitled to sue all or any of them for the full amount of the loss Hence the instant case cannot be treated as a case of joint tortfeasers AIR 1962 SC 89 Foll AIR 1939 All 698 Dist (Para 7)

(B) Limitation Act (36 of 1963) Art 68 — Expression Specific movable property — Does not cover amount of money AIR 1958 SC 827 Foll (1883) ILR 5 All 341, (1907) ILR 29 All 579, AIR 1930 All 397 and AIR 1930 All 573 Not followed in view of AIR 1958 SC 827 (Para 11)

(C) Limitation Act (36 of 1963) Art 4 — "Agent — Who is (Words and Phrases — Agent)

The Agent within the meaning of Art 4 is a person employed to do any act for another or to represent another in dealings with third persons Contract of agency need not be created by a written document It may be inferred from the circumstances and the conduct of the parties The position of the treasurer and the cashier of the Ban iras Hindu University is that of an gent vis a vis the University (AIR 1924 All 467 Rel on) (Para 12)

(D) Limitation Act (36 of 1963) Arts 4 and 113 — Starting point of limitation — Suit for money defalcated by treasurer of University — Limitation held started from when Vice Chancellor knew it and not when matter was placed before Executive Council

The instant suit was filed by the Banaras Hindu University for the recovery of an amount defalcated by its treasurer The Vice Chancellor on knowing about the defalcation had placed the matter before the executive Council of the University which thereon approved of the necessary action The issue was whether the limitation for filing the suit started from the knowledge of the Vice Chancellor

Held that the Vice Chancellor did not have to sit idle with his hands tied for so long as the matter did not come to be placed for one reason or the other before the Executive Council He could initiate action on his own general and wide authority as the Chief Executive of the University responsible to ensure that the Acts Statutes and the Rules were carefully observed Hence it would not be correct in face of this to say that the right to sue within the meaning of Art 113 did not accrue to the University till the matter had been considered by the Executive Council (Para 16)

(E) Limitation Act (36 of 1963) S 21(1) — Applicability

A University sued T its treasurer for the recovery of an amount defalcated C the cashier was joined later The issue was whether S 21(1) would apply to the case

Held that the joinder of C not being for his benefit or to safegaurd him against future litigation but with a view to seek recovery against him in case misconduct is established and since there was the claim specifically against him and a decree in favour of or against T alone would not have bound C there can be no escape from the application of S 21(1) Case law discussed (Para 24)

(F) Limitation Act (36 of 1963) S 10 — Trustee — Who is (Words and Phrases "Trustee")

The instant suit was filed by a University against its Treasurer and Cashier

Held that S 10 contemplates the situation where property has become vested in a trust in the person concerned for any specific

purpose The expression trust is used in this section in a technical sense and denotes an obligation which would be a trust in the strict sense of the terms of the law Mere fact that a person is loosely called as trustee for the sake of convenience and has obligations analogous to those of a trustee will not make him a trustee under this section Specific purpose means a purpose which is specified or expressed There has to be a trust created by the act of a party and it will not apply to a trust arising by operation of law or implied trust or obligation in the nature of trust S 10 could not therefore be applied AIR 1946 Mad 116 and AIR 1959 Andh Pra 186 Rel on

(Para 26)

Cases Referred Chronological	Paras
AIR 1972 SC 1181	8
AIR 1972 All 486	11
AIR 1962 SC 89	8
AIR 1960 Andh Pra 98 (FB)	21
AIR 1959 Andh Pra 186	26
AIR 1958 SC 827	11
AIR 1951 SC 1277	18
AIR 1946 Mad 116	26
AIR 1943 Oudh 164	20
AIR 1939 All 698	8
AIR 1934 Cal 187	19
AIR 1930 All 397	11
AIR 1930 All 573	11
AIR 1924 All 467	12
AIR 1921 Bom 152	23
(1908) ILR 35 Cal 519 11 Cal WN 350 (FB)	19
(1907) ILR 29 All 579 1907 All WN 181	11
(1904) ILR 28 Bom 11 5 Bom LR 618	18 19
(1892) ILR 14 All 524 1892 All WN 104	19
(1883) ILR 5 All 341 1883 All WN 48	11

Sidheshwari Prasad for Appellant R P Srivastava, for Respondents

JUDGMENT — This is a plaintiff s appeal It arises out of a suit for recovery of money

2 Banaras Hindu University the plaintiff appellant is a body corporate governed by the Banaras Hindu University Act 1915 and the Statutes framed thereunder Jyoti Bhushan Gupta, defendant 1 (since dead) was Treasurer of the University During the relevant period 1963 64 Gokul Dass Nagar defendant 2 was Senior Assistant Cashier On July 24 1964 a report was made that there was shortage of Rs 10 000/ in the Finance Section which is a wing of the Central Office of the University The Treasurer placed Nagar under suspension with effect from 4 8 1964 First Information Report was lodged by him on 5 8 1964 for — offence under S 408 Penal Code A request was made by the Treasurer to the Accountant General U P for special audit on 6 8 1964 in respect of the Imprest and Recoupment account of the Cashier 1963-64 The special audit report is dt/ 9 2 1965 On 10 2 1965 this was placed before the Vice Chancellor It disclosed defalcation of a sum of Rs 60 000/ including the amount of Rs 30 000/ which is in dispute in this case and is covered by the four cheques mentioned below

1	Cheque	D/ 13 11 1963	Rs	5 000
2	Cheque	D/ 13 11 1963	Rs	5 000
3	Cheque	D/ 28 01 1964	Rs	10 000
4	Cheque	D/ 30-01 1964	Rs	10 000

According to the plaintiff Gokul Dass Nagar defendant encashed these cheques by way of taking temporary advance from the State Bank (University Branch) but did not deposit the amount or accounted for the same otherwise It was not entered in the cash book either The special audit report was considered by the Finance Committee in its meeting held on 8th April 1966 It recorded its views in confidence for the purpose of being placed before the Executive Council The Executive Council accorded approval on April 13 1966

3 The suit giving rise to the appeal was instituted on 9th April 1969 by the University against Jyoti Bhushan Gupta It was averred that the defendant was negligent in not observing the Account Rules The cheques could not be drawn unless the amount was required for immediate disbursement The Cashier himself could not be the payee for the cheques Vouchers were not prepared Entry of any voucher was not made in the Advance Ledger The Treasurer did not verify and signed the cheques despite there being no supporting voucher Cheques were not entered in the Cheque Register A sum of Rs 30 000/ was embezzled by Gokul Dass Nagar the Senior Assistant Cashier In defence Jyoti Bhushan Gupta refuted that there was negligence or non observance of requisite rules on his part He was not concerned with the

maintenance of accounts which was the responsibility of the Accounts Officer The Accounts Officer Assistant Accounts Officer Cashier Accountants besides other assistants were responsible to maintain the accounts In regard to the embezzlement it was stated that a criminal case has been launched Plea of limitation was also raised

4 Preliminary issue whether the suit was bad for non joinder of Nagar the Cashier and those occupying the posts of Accounts Officer and the Assistant Accounts Officer was decided by the trial court on 26 11 1969 The Court below observed that the relief to the plaintiff could not be given without arriving at the finding that Nagar had embezzled the amount as alleged in the plaint and it could not be proper to give this finding at his back and moreover the court had also to avoid the multiplicity of suits The University applied on 17 12 1969 to implead Gokul Dass Nagar which was allowed 10 1 1970 Nagar was impleaded as defendant 2 He put in written statement contending that there was no irregularity on his part The defalcation was the result of negligence of the Accounts Officer the Assistant Accounts Officer and the Finance Section of the University He worked under the direction of the Treasurer The defendant it was further pleaded did not encash the cheques but allowed them to remain in the State Bank under transfer credit He also raised the plea of limitation against the suit

5 Learned First Additional District Judge found that the amount in question had been received by the defendant 2 who encashed the cheques in question It was not correct to say that the amount had been deposited by transfer credit Instead it was embezzled by the defendant 2 Defendant 1 was negligent negligence was there on the part of other employees also but the plaintiff had not brought the suit against them Limitation for filing a suit against those others had expired This amounted to relief granted to them and it had the result to discharge the others Defendant 1 could not be made liable to pay the amount According to the trial court this was a case of joint tortfeasors jointly and severally liable for the amount Limitation it was held was governed by Art 4 of the Limitation Act 1963 The misconduct of embezzlement became known to the Vice Chancellor in any case on 10 2 1965 In view of para 141 (iii) of the Account Rules the Vice Chancellor had to proceed to recover the amount The suit instituted on 9th April 1969 was beyond 3 years and hence barred by time Against defendant 2 it was barred also since it was to be deemed to have been instituted against him on 10 1 1970 when he was impleaded on the record The suit has been dismissed accordingly Aggrieved the plaintiff preferred this appeal Cross objection has been filed by Gokul Dass Nagar in respect of the findings recorded against him Both were heard together

6 Preliminary objection was raised by counsel for respondent 1 (Gokul Dass Nagar) to the effect that the appeal having abated against Jyoti Bhushan Gupta arrayed as respondent 2 in the memo of appeal it cannot be maintained or proceeded with against the surviving respondent Jyoti Bhushan Gupta died on 13 8 1974 Application was made on 18 3 1975 to implead his widow and sons accompanied with an application under S 5 Limitation Act for condonation of delay This was rejected by a learned Single Judge of this Court on 8 2 1979 with the observation that the appeal had abated against this respondent This in my opinion cannot in itself serve to make the appeal abated in so far as the surviving respondent is concerned

7 Upon the pleadings of the parties and the evidence placed on the record the case is not of joint tortfeasors Persons are said to be joint tortfeasors when their separate shares in the commission of the tort are done in furtherance of a common design (Winfield Tort (12th Ed) 1984 page 605) It is nowhere averred in the case before me that the two defendants acted in concert or that they conspired to embezzle The case set up by the University is that defalcation was made by the Senior Assistant Cashier and the Treasurer was guilty of negligence in not conforming to the Account Rules The breaches of duty by the two defendants in their respective sphere caused allegedly single injury to the appellant The appellant is entitled to sue all or any of them for the full amount of the loss The court below was not right in having treated this as a case of joint tortfeasors At page 604 in Winfield on Torts it is observed

Where two or more people by their

independent breaches of duty to the plaintiff cause him to suffer distinct injuries no special rules are required for each tortfeasor is liable for the damage which he caused and only for that damage Where however two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated The law in such a case is that the plaintiff is entitled to sue all or any of them for the full amount of his loss which means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others It is greatly to the plaintiffs advantage to show that he has suffered the same indivisible harm at the hands of a number of defendants for he thereby avoids the risk inherent in cases where there are different injuries of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him

8 Regard being had to the averment hereof it cannot be said legitimately that the appellant could not have brought the action for the necessary relief against Gokul Dass Nagar alone who is still before the Court in the appeal Effective order can be passed against this respondent defendant in the event of the charge being made out and despite the absence of the other defendant namely the Treasurer No conflict of decrees can be said to arise for the obvious reason that they were not joint tortfeasors None of the three tests laid in the State of Punjab v Nathu Ram AIR 1962 SC 89 followed in R P Gupta v Murli Prasad AIR 1972 SC 1181 can be said to be satisfied so as to lead to the conclusion that the appeal against the remaining respondent is incompetent In Rani Dhandei Kuer v Fatma Zuhra AIR 1939 All 698 cited for the respondent the plaintiff had based her claim on an act alleged to have jointly committed by all the defendants and the relief claimed was jointly against the defendants in those terms This evidently constitutes the distinguishing feature

9 This can be viewed from another angle also According to the plaintiffs case the Treasurer was guilty of breach of statutory duty contained in the Account Rules and hence he became liable in tort It is neither alleged nor shown that the liability was contractual Under the general common law rule based on the maxim actio personalis moritur cum persona, the death of either party extinguishes any existing cause of action in tort by one against the other It is not the case of the University that any property was appropriated by the Tesasurer or that he added the same to his estate (see Winfield on Tort page 657) The cause of action against Jyoti Bhushan Gupta, the Treasurer therefore died with his death. No question arose therefore to substitute his legal representatives on the record in accordance with O 22 R 4/11 C P C It is settled that application under O 22 R 4 cannot be filed, if the right to sue does not survive at all or if it survives against the surviving defendants alone In such a case R 2 will apply R 2 provides that where there are more defendants than one and any one of them dies and where the right to sue survives against the surviving defendant alone the Court shall cause an entry to that effect to be made on record and the suit shall proceed against the surviving defendant The preliminary objection raised for the respondent cannot therefore be sustained

10 Learned counsel for the appellant urged that the court below erred in taking the view that the suit was barred by limitation it may be recapitulated that there was report made on 24th July 1964 pointing that a sum of Rs 10 000/ was short in the Finance Section Special Audit report D/ 9 2 1965 was placed before the Vice Chancellor on 10-2 1965 and the Finance Commission considered this on 8th April 1966 It came up before the Executive Council for the first time on April 13 1966 when it took the decision in the matter The argument advanced is that the limitation should have been taken to commence on 13th April 1966 and hence the suit brought on 9th April 1969 be treated as within limitation For the other side it is maintained that the starting point of limitation would be 10-2 1965 if not earlier because the Vice Chancellor in any event became apprised on that date upon the Audit Report being received The trial court has applied Art 4 Limitation Act 1963 The relevant Articles which may deserve consideration are

Description of suit	Period of Limitation	Time from which period begins to run
4 Other suits by principals against agents for neglect or misconduct	Three years	When the neglect or misconduct becomes known to the plaintiff
68 For specific movable property lost or acquired by theft or dishonest misappropriation or conversion	Three years	When the person having the right to the possession of the property first learns in whose possession it is
113 Any suit for which no period of limitation is provided elsewhere in this Schedule	Three years	When the right to sue accrues

11 In so far as Art 68 corresponding to Art 48 (First part of the old Act) is concerned this stands ruled out for the reason that the suit in the present case) is not for specific movable property This expression means property of which one may demand the delivery in specie This connotes property which can be specified by the delivery of the identical subject Contrary view was taken by a Division Bench of this Court in Rameshwar v Mata Bhikh (1887) ILR 5 All 341 Money was also treated as specific movable property Doubt was expressed in regard to this view in Ramlal v Ghulam Husain (1907) ILR 29 All 579 and again in Jagangi v Bandan AIR 1930 All 397 and Benares Bank Ltd v Ram Pd AIR 1930 All 573 but the authority in Rameshwar v Matabhik (supra) was nonetheless followed Controversy on this aspect was set at rest in Raghunath Das v Gokul Chandra AIR 1958 SC 827 It was held that the expression specific movable property appearing in Art 49 of the old Limitation Act is apt only to govern suit wherein the plaintiff can allege that he is entitled to certain specific movable property and/or of which he is presently entitled to possession in specie and which the defendant has wrongfully taken from him and/or is wrongfully withholding from him This was a suit by an heir against other heirs to recover his share of movable estate It was held that this could not be treated as claim for specific movable property wrongfully taken such as is contemplated in Art 49 and that instead limitation was governed by Art 120 of the old Act It has been followed by a Division Bench of this Court in State of U P v Hindustan Lever Ltd AIR 1972 All 486

12 Coming to Art 4 it may not be doubted that in these matters the position of the Treasurer was that of an agent vis vis the University and as is stated in para 4 of the plaint also Nagar functioned under his supervision and control Under Statute 12(1) of the University as then in force the Treasurer was elected by the Court from among a panel of three persons nominated by the Executive Council which was subject to the approval of the visitor The Treasurer was responsible subject to the powers of the Executive Council to see that all monies are expended on the purpose for which they are granted or allotted Cl 161 specified that the receipt of the Treasurer or of the person or persons duly authorised in this behalf by the Executive Council for any money payable to the University shall be sufficient discharge for the same The Treasurer also used to be a Member of the Finance Committee vide Statute 22A The office was held in honorary capacity In para 35 of his written statement Gokul Dass Nagar respondent admits that he was to act under the orders and directions of the Treasurer as well as the Accounts Officer The Agent within the meaning of Art 4 is a person employed to do any act for another or to represent another in dealings with third persons Contract of agency need not be created by a written document It may be inferred from the circumstances and the conduct of the parties In A C Mukerji v Municipal Board Banaras AIR 1924 All 467 the Municipal Board sued its Executive Officer for defalcation in accounts done by the Head Accountant This was considered to be a case of agency The Division Bench observed that where it can be shown that a loss sustained by the principal is directly traceable to disregard on the part of the agent or directions issued to him regarding the conduct of business even though such disregard may have been due to

nothing worse than negligence or over confidence in the honesty of others Such misconduct on the part of the agent was actionable The defendants were acting within the scope of their authority though according to the case of the University there was abuse of the same on their part

13 Assuming as the appellants counsel submits that Art 4 is inapplicable the residuary provision left over in the matter is Art 113 In either event the position remains the same In one case the limitation commences when the neglect or misconduct becomes known to the plaintiff and in the other the starting point is when the right to sue accrues The right to sue can be said to accrue when the act of negligence or misconduct becomes known to the person competent to take action in that behalf The starting point of limitation would thus be the same whether Art 4 or Art 113 is applied The question is whether the Vice Chancellor could not be competent to proceed on the special audit report and the material placed before him on 10 2 1965 It is argued for the University that the Executive Council is the authority and action could not be taken before 13th April 1966 when for the first time the matter was placed on the agenda of the meeting of the Executive Council I find little substance in this contention

14 The Vice Chancellor is the principal Executive and Academic Officer of the University vide Statute 9(1) corresponding to Ss 7B and 7C of the Act as at present Statute 18(2)(iii) deals with the powers of the Executive Council providing that it had to manage and regulate the finances accounts investments property business and all other administrative affairs of the University and for that purpose to appoint such agents as it thinks fit The Vice Chancellor had the duty laid upon him to see that the Acts Statutes Ordinances and Regulations were faithfully observed and he was expressly conferred with all powers necessary for the purpose He also had the power to convene meetings of the Executive Council In Statute 9(5) the provision made was that the Vice Chancellor shall exercise general control over the affairs of the University and shall give effect to the decisions of the authorities of the University The Account Rules contain instructions for the conduct of the financial and accounting works in general Para 141(ii)(iii) is material and may here be reproduced as under

(ii) whenever any loss of stores or other property by embezzlement fraud theft or negligence of any University employee or other causes is discovered at preliminary investigation shall forthwith be made into the loss by the Head of Office and the result of such preliminary investigation shall be reported to the Registrar who will obtain suitable orders of the Vice Chancellor and also report it to the Finance Committee and the Executive Council in due course if the loss exceeds Rs 50/-

A detailed enquiry shall simultaneously be made by an officer of the University or a special committee appointed for the purpose as may be required by any general or special order of the Executive Council If the circumstances attending to the loss demand it or if the Executive Council so desires arrangement may be made with the Accountant General for expert examination of accounts by means of special audit When the matter has been fully enquired into taking due account of the report showing the total money lost the circumstances in which the loss took place and the steps taken or recommended to recover the money and to punish the offenders and measures taken or proposed to be taken to avoid recurrence of such loss in future shall be submitted to the Executive Council through the Finance Committee for orders The Executive Council may order the amount of the loss to be written off

(iii) Whenever embezzlement of University money is discovered an enquiry shall at once be instituted by or under the orders of the Vice Chancellor who will also bring the matter to the notice of the Finance Committee and the Executive Council showing the total sum misappropriated or embezzled its modus operandi and steps taken to recover the money and punish the offenders

15 16 Para 141 it will be noticed deals with losses The instructions contained therein are to be followed in dealing with losses Cl (ii) deals with losses in general Cl (iii) is specific in relation to embezzlement of university money It enjoins upon the Vice Chancellor to institute enquiry at once upon embezzlement being discovered and to bring the matter to

the notice of the Finance Committee and the Executive Council showing the total sum embezzled its modus operandi and also steps taken to recover the money and punish the offenders. The Vice Chancellor did not have therefore to sit idle with his hands tied for so long as the matter did not come to be placed for one reason or the other before the Executive Council. He could initiate action on his own general and wide authority as the Chief Executive of the University responsible to ensure that the Acts, Statutes and the Rules were carefully observed. In my view it would not be correct in face of this to say that the right to sue within the meaning of Art. 113 did not accrue to the University in 1965 for the mere reason that the matter had not till then been considered by the Executive Council. Limitation commencing on 10-2-1965 would expire thus clearly on 9-2-1968 irrespective of whether the plaintiff appellant invokes Art. 4 or Art. 113, Limitation Act.

17. In addition to the above learned counsel for respondent 1 contended that so far as this respondent is concerned the suit is to be deemed as having been instituted on 10-1-1970 when he was for the first time impleaded as defendant 2 to the suit and hence too the suit against him is barred by three years rule of limitation. Reliance is placed on S. 21(1) Limitation Act 1963 which reads as under :—

(1) Where after the institution of a suit a new plaintiff or defendant is substituted or added the suit shall as regards him be deemed to have been instituted when he was so made a party.

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

As mentioned above the suit instituted on 9th April 1969 was against the Treasurer alone. He raised a plea of non joinder whereupon the trial court directed on 26-11-1969 that the Senior Assistant Cashier be also impleaded and this was done on 10-1-1970 upon application D/ 17-12-1969. The appellants' counsel argued that the joinder of defendant 2 being considered as that of a proper party only the suit is not to be considered as barred by limitation in terms of S. 21(1) aforementioned. On the facts hereof this does not represent the correct legal position. Due to reasons stated above the suit including against the defendant 2 would have been barred by limitation on 9th April 1969 itself even if he had been arrayed as a party at the initial stage. This apart the case not being of joint tortfeasors each of the two defendants stood on his own footing. The suit against defendant 1 could not be thrown out due to the Senior Assistant Cashier being not made a party. There is a distinct and self contained cause of action set up against defendant 2 charging him with embezzlement of a specific amount. No such charge is made against the other defendant. It is quite true that on account of the defendant 2 being not impleaded till 10-1-1970 the suit against defendant 1 does not become barred by limitation but so far as relief sought against defendant 2 himself is concerned the suit evidently is beyond time. In the suit initially framed the plaintiff could not get any relief against this defendant 2. In order that recovery of money might be had from him there was no other way except to sue him either separately or by way of his impleadment in the present action. I do not know how for the sake of recovery claimed against this defendant 2 it might be claimed that he is to be regarded a proper but not necessary party. No decree against him was obtainable behind his back.

18. The principle enunciated in Davidas v. Shrishailappa AIR 1951 SC 1277 at page 1282 was

The rule that a person who ought to have been joined as a plaintiff to the suit and is not made a party will entail dismissal of the suit if the suit as regards him be barred by limitation when he is joined has no application to non joinder of proper parties. In Guruvayya's case (1904) ILR 28 Bom. 11 a suit to recover possession of a house was originally brought by two plaintiffs, the second plaintiff being described as the manager of the family. At a late stage of the suit defendants raised an objection that the other members of the family had not been joined. The trial court allowed the application filed by the other members to be joined as parties and decreed the suit, but the appellate court dismissed the suit holding that it was barred because of S. 22, Limitation Act. The High Court held that S. 22, Limitation

Act does not in itself purport to determine directly whether the joinder of the parties after the institution of a suit in all cases necessarily involves the bar of limitation if the period prescribed for such suit has then expired Such a result must depend upon whether the joinder was necessary to enable the court to award such relief as may be given in the suit as framed If fresh parties are merely joined for the purpose of safeguarding the rights subsisting as between them and others claiming generally in the same interest the determination of the date of the institution of the suit as regards such freshly joined parties does not ordinarily affect the right of the original plaintiff to continue the suit and will not attract the application of the general provisions of the Limitation Act

19 The crux of the matter is whether fresh parties are merely joined for the purpose of safeguarding the rights subsisting between them and others claiming generally in the same interest If this is so the determination of the date of the institution of the suit as regards such freshly joined parties does not ordinarily affect the right of the original plaintiff to continue the suit In a suit by manager for instance if the other co-sharers are adults and the right to insist on the other co-sharers being brought on the record is for the benefit of the defendant to ensure himself against further litigation the subsequent joinder of the adult members as co-plaintiffs or pro forma defendants did not attract S 22 of old Act (Guruvayya Gowda v Dattatrava Anant (1904) ILR 28 Bom 11) (See also Secretary of State v Dhirendra Nath Roy AIR 1934 Cal 187) The position changes where there is relief sought against the newly added defendant in his own right Against defendant 1 (Jyoti Bhushan Gupta) the suit may not have failed because Gokul Das Nagar (defendant 2) was not brought on record earlier than 10-1 1970 but this by no means suggests that even as against defendant 2 from whom recovery is claimed the rule of limitation be bypassed The Court cannot do otherwise than dismiss a suit which was barred by limitation The power of a Court to add a party and the duty of that Court to dismiss the suit as barred by limitation are two different questions Imamuddin v Liladhar (1892) ILR 14 All 524 It was held that where the Court added a plaintiff of its own motion and the suit is such as could not be brought without him S 22 Limitation Act 1877 applied to right of suit of the person so added A Full Bench of the Calcutta High Court affirmed in Ram Kinkar Biswas v Akhil Chandra Chaudhary (1908) ILR 35 Cal 519 that a Court adding a party on its own motion is not freed from the restrictions of the Limitation Act

20 In Sheo Prasad v Mt Parkash Rani AIR 1948 Oudh 164 relied on for the appellant the suit was brought to enforce a mortgage deed against the mortgagor the purchaser of the property and other persons One S applied and was made defendant at his instance as a subsequent mortgagee S 22 Limitation Act 1908 it was held did not apply the reason being that a suit is not liable to be dismissed if a puisne mortgagee is left out The decree in such a suit shall bind all those who claim interest through the mortgagor irrespective of whether they are or are not impleaded as parties It is this that constitutes the distinguishing feature In the present case a decree against defendant 1 could not of its own force bind defendant 2

21 The decision in Ongole Byragi Mutt Ongole v Inala Kannayya AIR 1960 Andh Pra 98 (FB) is also of no assistance to the appellant The Managing Trustee of a Mutt filed suit to recover damages for use and occupation on ground that the defendants were in unauthorised occupation of the land The defendants resisted on ground that the action brought only by one of the trustees was not maintainable Thereupon the two other trustees were impleaded as supplemental defendants Upon the bar raised of S 22 Limitation Act 1908 it was held

If however at the inception the necessary parties are impleaded the non joinder of other persons who are not necessary or indispensable but whose joinder is only desirable to safeguard their rights and the rights of others and to prevent further litigation does not render the suit as improperly constituted and the joinder of those parties after the period of limitation will not have necessitated the dismissal of the suit

22 It will be noticed that decree in favour of the Trust could have been passed even if co-trustees were not arrayed as plaintiffs or pro forma defendants In case the suit were

dismissed the co trustees will have been equally bound but in the present case) there is relief distinctly claimed against defendant 2 A decree in favour of or against the other defendants will not have of its force bound defendant 2

23 The position is enunciated in S R Shete v S M Hedge AIR 1921 Bom 152 by a Division Bench —

If the plaintiff was seeking any relief against them clearly his claim to such relief would be barred But it does not follow in all cases where a party is added as defendant to the record after the period when the main relief claimed by the plaintiff against the other defendants would be barred that by adding that defendant the whole of the plaintiff's claim becomes barred by limitation

(Emphasis supplied)

24 The joinder of defendant 2 not being for his benefit or to safeguard him against future litigation but with a view to seek recovery against him in case misconduct is established and since there is the claim specifically against him and a decree in favour of or against defendant 1 alone will not have bound defendant 2 there can in my opinion be no escape from the application of S 21(1) of the new Limitation Act

25 Learned counsel made reference also to the proviso to S 21(1) The proviso does appear in the corresponding S 22 of the old Act The court below was misdirected in having relied upon S 22 instead of S 21 of the new Act though the cause of action accrued when the new Act had come into force Upon the material on the record it is not possible as the respondent s counsel rightly urged to record a finding that the non impleadment of Gokul Das Nagar defendant in the suit as originally instituted was due to a mistake made in good faith The averments contained in the plaint as initially filed speak for themselves in this behalf It was stated even at this stage that the embezzlement was done by Nagar and the details thereof were also given When the question arose of his impleadment on objection raised by the Treasurer the stand taken for the University before the lower Court as recorded in its order D/ 26 11 69 was that a criminal complaint was proceeding against Nagar who actually had embezzled the amount and further that it was not decided whether any civil action would be brought against him and other respondents in that behalf The application to implead Nagar was opposed for the University on this basis It was now here maintained in the pleadings or in the application 44C D/ 17 12-69 to implead Nagar that the omission to array him as a defendant was on account of some mistake in good faith Prior to the institution of the suit the matter had been considered at length at various levels Finance Committe deliberated over the same It came up also before the Executive Council We have on record that eminent lawyers of this Court were also consulted before the suit was brought The decisions not to proceed in civil action against Gokul Das Nagar appear themselves to have been deliberately reached after deliberation and thought given to the matter The proviso to S 21(1) may not be invoked where the plaintiff decides to be wiser after the event and is unable to pinpoint as to where and how did the mistake arise much less that this occurred despite due care and caution being observed

26 Before the trial court reference for the University was made to S 10 Limitation Act also This however has not been pursued before me in this Court The reason is apparent S 10 Limitation Act contemplates the situation where property has become vested in a trust in the person concerned for any specific purpose The expression trust is used in this section in a technical sense and denotes an obligation which would be a trust in the strict sense of the terms of the law Mere fact that a person is loosely called a trustee for the sake of convenience and has obligations analogous to those of a trustee will not make him a trustee under this section Specific purpose means a purpose which is specified or expressed There has to be a trust created by the act of a party and it will not apply to a trust arising by operation of law or implied trust or obligation in the nature of trust (Hussam Ali v Baqir Ali AIR 1946 Mad 116 V B v G S Ambayya AIR 1959 A P 186)

27 Consideration being had to the observations made in the above the conclusion in my opinion is irresistible that the suit was barred by limitation when instituted on 9th April 1969 itself and that against Gokul Dass Nagar defendant it is barred by time

also in view of S 21(1) Limitation Act 1963 In regard to Jyoti Bhushan Gupta a note needs also be made of the fact that in the appeal there was no relief sought against him though he was arrayed as respondent 2 There is a specific note at the foot of the memo of appeal which reads

The present appeal is being filed for the relief claimed against respondent 1 Sri Gokul Dass Nagar alone in accordance with Executive Council s resolution No 287 D/ 26 2 1972

The appeal has thus been pursued virtually against Gokul Das Nagar respondent 1 alone from the initial stage

28 Respondent 1 has filed cross objection upon the findings recorded against him Since the appeal fails on ground of limitation in any event as discussed above it is not called upon to enter into merits of those other findings

29 The appeal and the cross objection are consequently dismissed In the circumstances costs shall be borne by the parties throughout

Appeal dismissed

1986 ALL L J 41

K N SINGH AND R K SHUKLA JJ

State of U P Appellant v Latif and others Respondent

Govt Appeal No 3193 of 1983 D/ 17 8 1985 *

Allahabad High Court Rules (1952), Part 1 Chapter V, R 2 Proviso (a) — Appeal against acquittal — Direction under the proviso that all applications for leave or special leave to appeal against order of acquittal under S 378 Cr P C be heard and disposed of by a judge sitting singly — Direction held not ultra vires of Ss. 368 and 369 Cr P C — However, holding the direction as impracticable the High Court suggested modification therein ((1) Constitution of India, Art 225, (u) Criminal P C (2 of 1974), Ss 368, 369, 378)

---

*Against judgment and order of B B Harelay Sessions Judge Rampur D/ 20 8 1983

KC LC/G225/85/AMG

R 2 Proviso (a) of Chapter V Part I of the Allahabad High Court Rules (1952) as well as the order of the Chief Justice in pursuance thereof directing that a Judge sitting alone may hear and dispose of leave matters under S 378(3) and (4) of Cr P C was held not ultra vires of S 368 or 369 or any other provision of the Code Ss 368 and 369 do not relate to hearing of appeal against order of acquittal The question whether leave application as contemplated by S 378 of the Code should be heard by a single Judge or by a Bench of two Judges has no nexus to Ss 368 and 369 S 369 read with S 366 contains mandatory direction that an appeal against sentence of death and proceedings submitted by the Sessions Judge for confirmation of death sentence shall be heard by a Bench consisting of not less than two Judges Apart from this there is no other provision in the Code requiring hearing of appeals filed by the State under S 378 of the Code by a Bench of two Judges In the absence of any such provision under the Code it is permissible to frame Rules under Art 225 of the Constitution providing for hearing of an appeal under S 378 of the Code by a Judge sitting alone (Paras 4 9 11 12)

The difference in the language in sub secs (3) and (4) of S 378 suggests that in a case where the order of acquittal may have been passed in a case instituted upon complaint an application has to be made by the complainant for the grant of special leave to appeal from the order of acquittal It further makes clear that the appeal may be presented only after the High Court has granted special leave but where appeal against the order of acquittal is filed by the State either under sub-sec (1) or sub-sec (2) no separate application for grant of special leave is necessary In such a case prayer for leave may be incorporated in the petition of appeal itself (Para 7)

However the High Court observed that the Chief Justice appears to have issued the order treating the application for leave and special leave as a separate proceeding from the appeal itself Under the orders of the Chief Justice as well as the practice which is being followed in the High Court an appeal against acquittal including an application for leave to appeal as contemplated by S 378(3) or 378(4) is listed before a single Judge If and when the single Judge grants leave and entertains the appeal

it is placed before Division Bench for hearing in accordance to R 2(vii)(b) But if the Single Judge refuses to grant leave the appeal stands dismissed finally although R 2(vii)(b) contemplates final disposal of an appeal against order of acquittal by a Bench of two Judges This results into anomaly To remove this anomaly it would be just and proper that leave matters should also be disposed of by Division Bench Therefore the appeals against order of acquittal involving sentence of death or imprisonment for life on trial by the Court of Session together with applications for grant of leave should be heard by a bench of two Judges while appeals against acquittal in respect of other offences together with application for leave may be heard by a Single Judge (Paras 6 14)

Cases Referred Chronological Paras

AIR 1982 SC 800 1982 Cri LJ 614 8 9 14
AIR 1977 SC 1328 1977 Cri LJ 997 7
AIR 1954 All 47 1953 All LJ 494 1954 Cri LJ 39 10

Dr Govt Advocate for Appellant Tej Pal and J S Tomar for Respondents

K N SINGH, J — On a reference made by a learned Single Judge of this Court the following question has been placed before us for decision

Whether proviso (a) to rule 2 of Chapter V Part I of the Allahabad High Court Rules 1952 and the order dated 29 6 1978 passed by the Chief Justice in exercise of the powers under the said proviso (a) are ultra vires of Ss 368 and 369 Cr P C read together?

2 The facts giving rise to the reference of the abovenoted question are necessary to be noted Latif Jafir Chhotey and Abdul Aziz applicants stood their trial for offences under Ss 302 and 323/34 I P C before the Sessions Judge Rampur On conclusion of trial the Sessions Judge acquitted the applicants Against the aforesaid order of acquittal the State Government preferred an appeal under S 378 of the Criminal P C 1973 before this Court Along with the appeal the State filed a separate Miscellaneous Application for grant of leave for filing appeal as contemplated by S 378(3) of the Cri P C (hereinafter referred to as the Code) The appeal as well as the application for grant of leave both were listed together before brother I P Singh in accordance with the general order issued by the Chief Justice in exercise of his powers under the proviso (a) to R 2 Chap V Part I High Court Rules 1952 On 31 8 1984 I P Singh J granted leave and entertained the appeal and directed for issue of notices and bailable warrants to the applicant accused In pursuance to the notice issued by the court the accused put in appearance and filed an application purporting to be under Ss 378/384/382 of the Code read with Art 226 of the Constitution On their behalf a submission was made before the learned Single Judge that a Judge sitting singly has no jurisdiction to grant leave or to entertain the appeal and to issue notice to the accused in the appeal filed under S 378 of the Code A further submission was made that proviso (a) to rule (2) of Chap V part I High Court Rules 1952 which confers power on the Chief Justice to direct that any case or class of cases may be heard by a Bench of two Judges as well as the order dt 29 6 1978 issued by the Chief Justice were ultra vires of Ss 368 and 369 of the Code The learned Single Judge was of the opinion that the matter was of wide importance and he therefore referred the question for decision to a larger Bench

3 Chapter XXIX of the Criminal P C (II of 1974) provides for appeals Section 372 provides that no appeal shall lie from any judgment or order of a criminal court unless provided by the Code or any other law S 373 provides for appeals against certain orders to the Court of Sessions S 374 provides for appeal to the Supreme Court against conviction on a trial held by the High Court in exercise of its original criminal jurisdiction S 375 provides that no appeal shall lie in cases where the accused pleads guilty S 376 provides that no appeal shall lie in petty cases S 377 provides for appeal by the State Government against sentence on the ground of its inadequacy Such appeals are required to be filed before the High Court S 378 provides for appeals in cases of acquittal Subsec (1) provides that the State Government may in any case direct the public prosecutor to file appeal to the High Court from an original or appellate order or acquittal passed by any court other than the High Court or an order of acquittal passed by the Court of Session in

revision This is subject to sub-sections (3) and (5) Sub-sec (2) provides that if an order of acquittal is passed in a case in which the offence may have been investigated by the Delhi Special Police Establishment or by any other agency under any Central Act other than the Code the Central Government may also direct the Public Prosecutor to present appeal to the High Court from the order of acquittal Sub-sec (3) provides that no appeal either under sub-sec (1) or sub-sec (2) shall be entertained except with the leave of the High Court Sub-sec (4) provides for filing of appeal by the complainant after obtaining special leave to appeal from the High Court against an order of acquittal where the order of acquittal may have been passed in a case instituted upon complaint Sub-sec (5) prescribes period of six months for filing appeal by a complainant against the order of acquittal S 382 lays down that every appeal shall be made in the form of petition in writing and presented by the appellant or his pleader and every such petition shall be accompanied by a copy of the judgment or order appealed against S 383 provides for filing appeal when the appellant is in jail S 384 confers power on the appellate court to dismiss an appeal summarily after hearing the appellant S 385 prescribes procedure for hearing of appeals which are not dismissed summarily S 386 confers power on the appellate court to dismiss appeals filed under S 377 or 378 if there is no sufficient ground for interfering with the judgment or order under appeal These are the provisions which regulate filing of appeal and its hearing Chapter XXIX does not provide for hearing of appeal filed under S 378 by a single Judge or by a Bench of two Judges

4 However S 366 provides that in a case where the Court passes an order of death the proceedings shall be submitted to the High Court and the sentence will not be executed unless it is confirmed by the High Court S 368 lays down that after the proceedings are submitted under S 366 the High Court may confirm the sentence or pass any sentence warranted by law or it may annul the conviction and pass any other sentence or it may acquit the accused S 369 lays down a mandatory provision that in every case submitted under S 366 for the confirmation of sentence or passing of any conviction and sentence shall be heard by at least two Judges when the High Court consists of two or more Judges Thus S 369 is the only provision in the Code which provides for the hearing of the reference made under S 366 by a Bench of at least two Judges Ss 368 and 369 do not relate to hearing and disposal of an appeal under S 378 These provisions have no bearing on the question whether an appeal against the order of acquittal should be heard and disposed of by a Judge sitting singly or by a Bench of two Judges

5 Constitution of Benches and allocation of cases for hearing to a single Judge or a Bench of two Judges is regulated by the Rules framed by the High Court under Art 225 of the Constitution of India This Court has also framed rules known as Allahabad High Court Rules 1952 Chapter V of the Rules deals with jurisdiction of Judges sitting alone or in Division Bench Rule 1 as contained in Chap V provides that Judges shall sit alone or in such Division Courts as may be constituted from time to time and may do such work as may be allotted by the Chief Justice or in accordance with his directions R 2 Prescribes matters which shall be heard and disposed of by a Judge sitting alone These include Civil as well as matters arising out of Criminal law R 2(vii) which relates to criminal appeals and application is as under

2 Except as provided by these rules or any other law the following cases shall be heard and disposed of by a Judge sitting alone namely —

x x x x x

(vii) a Criminal Appeal application or reference except —

(a) an appeal or reference in a case in which a sentence of death or imprisonment for life has been passed

(b) an appeal under section 378 of the Code of Criminal Procedure 1973 from an order of acquittal

(c) to (f)

Provided that —

(a) The Chief Justice may direct that any case or class of cases which may be heard by a

Judge sitting alone shall be heard by a Bench of two or more Judges or that any case or class of cases which may be heard by a Bench of two or more Judges by a Judge sitting alone

Under the aforesaid provision a criminal appeal application or reference shall be disposed of by a Judge sitting alone except an appeal or reference in which sentence of death or imprisonment for life has been passed as well as an appeal under S 378 of the Code from an order of acquittal The rules provide that a Single Judge has no jurisdiction to hear or dispose of an appeal against the sentence of death or imprisonment for life The Rules further provide that an appeal against order of acquittal under S 378 of the Code is to be heard and disposed of by a Bench of two Judges Proviso (a) to the rule confers power on the Chief Justice to direct that any case or class of cases which may be heard by a Single Judge sitting alone may be heard by a Bench of two Judges and similarly where a case is required to be heard by a Bench of two Judges it may be heard by a Judge sitting alone

6 In pursuance of proviso (a) to the rule the Chief Justice passed an order on 29 6 1978 which reads as follows –

In exercise of powers conferred under the proviso (a) to rule 2 Chapter V Rules of the Court 1952 Vol I it is hereby ordered that henceforth all applications for leave or special leave to appeal against an order of acquittal as provided in Ss 378(3) and 378(4) shall be heard and disposed of by a Judge sitting alone

The provisions contained in rule 8 Chapter V Rules of the Court 1952 Vol I shall with necessary modifications and adaptations be read interpreted and applied consistent with this order This order shall be applicable to Lucknow Bench also

It is in pursuance of the above order that applications for leave under S 378(3) or special leave to appeal under S 378(4) against order of acquittal are being heard and disposed of by a Judge sitting singly As noted earlier under the Rules an appeal or reference where a sentence of death or imprisonment for life has been passed cannot be heard by a Judge sitting alone instead it is to be heard by a Bench of two Judges Similarly an appeal under S 378 from an order of acquittal is also to be heard and disposed of by a Bench of two Judges but the order of the Chief Justice issued under proviso (a) provides for hearing of the applications for leave or special leave to appeal by a Judge sitting alone The Chief Justice appears to have issued the order dt 29 6 1978 treating the application for leave and special leave as a separate proceeding from the appeal itself Under the orders of the Chief Justice as well as the practice which is being followed in this Court an appeal against acquittal including an application for leave to appeal as contemplated by S 378(3) or 378(4) is listed before a Single Judge If and when the Single Judge grants leave and entertains the appeal it is placed before Division Bench for hearing in accordance with R 2(vii)(b) But if the leave is refused the appeal stands dismissed The order of the Chief Justice proceeds on the assumption that disposal of leave or special leave application as contemplated by S 378(3) and 378(4) is a separate proceeding from appeal against an order of acquittal

7 In State of Rajasthan v Ramdeen AIR 1977 SC 1328 it was held that no separate petition for the grant of leave for filing appeal against acquittal under S 378(3) is necessary Under the law it will be perfectly in order if a composite application is made containing necessary facts and circumstances of the case with the grounds which may be urged in the appeal along with a prayer for leave to entertain appeal It is not necessary that an application to entertain appeal should be filed first and only after grant of leave the appeal may be preferred However under sub sec (4) of S 378 the complainant is required to make an application for grant of special leave to appeal from the order of acquittal The difference in the language in sub secs (3) and (4) of S 378 suggests that in a case where the order of acquittal may have been passed in a case instituted upon complaint an application has to be made by the complainant for the grant of special leave to appeal from the order of acquittal It further indicates that the appeal may be presented only after the High Court has granted special leave but where appeal against the order of acquittal is filed by the State either under sub sec (1) or sub sec (2) no separate application for grant of special leave is necessary In such a case prayer for leave may be incorporated in the petition of appeal itself

8 In State of Madhya Pradesh v Dewadas AIR 1982 SC 800 the Supreme Court ruled that an application for leave to appeal under sub sec (3) of S 378 without which no appeal under sub-secs (1) and (2) can be entertained was an integral part of the appeal and therefore it must be laid before a Bench of two Judges of the High Court under the Madhya Pradesh High Court Rules The Court further held that the Single Judge had no competence to hear and dispose of question of grant of leave under sub sec (3) of S 378 This decision was rendered on the consideration of the Madhya Pradesh High Court Rules Rule 1(q)(2) Chapt I of Part I of the Madhya Pradesh High Court Rules as quoted in the judgment is almost identical to R 2(vii)(a) (b) of the Allahabad High Court Rules There was however no provision like proviso (a) conferring power on the Chief Justice to issue orders for hearing of a case by a Single Judge although under the Rules it may be cognizable by a Bench of two Judges

9 Learned counsel for the applicant placing reliance on the Supreme Court decision in State of Madhya Pradesh v Dewadas submitted that a Judge sitting singly has no jurisdiction to grant leave under sub-sec (3) of S 378 of the Code On a careful scrutiny of the Supreme Court judgment we find that the view taken by the Supreme Court was based on the rules framed by the Madhya Pradesh High Court The Madhya Pradesh High Court rules lay down that save as provided by law or by rules or by special orders of the Chief Justice all matters would be heard and disposed of by a Bench of two Judges including an appeal against the order of acquittal There the Chief Justice had not issued any order for hearing and disposal of appeal against the order of acquittal by a Judge sitting singly In the absence of any such direction by the Chief Justice an appeal against the order of acquittal by the State could only be heard and disposed of by a Bench of two Judges in accordance with the Rules of Madhya Pradesh High Court In the instant case under R 2(vii)(b) also an appeal cannot be heard and disposed of by a Single Judge But proviso (a) confers power on the Chief Justice to direct for the hearing and disposal of any case or class of cases which may be heard by a Judge sitting alone to be heard by a Bench of two or more Judges In exercise of his powers under the proviso the Chief Justice has issued the order on 29 6 1978 directing that all applications for leave or special leave to appeal against an order of acquittal under S 378 of the Code shall be heard and disposed of by a Judge sitting alone The order of the Chief Justice has been issued in exercise of his statutory powers conferred on him by the Rules of the Court which does not offend S 368 or S 369 or any other provision of the Code

10 Learned counsel for the applicants placed reliance on a Division Bench decision of this Court in State v Ballister Singh 1953 All LJ 494 (AIR 1954 All 47) where it was held that a petition of Criminal appeal could be dismissed under S 421 of the Criminal P C 1898 summarily but in cases which were cognizable by two Judges an order of summary dismissal could only be passed by a Bench of two Judges The Division Bench on an interpretation of R 2 as contained in Chap V of the Rules of this Court held that an appeal against order of acquittal cognizable by two Judges could not summarily be dismissed by a Judge sitting singly The judgment is however founded on the Rules as they existed in 1953 R 2 of Chapter V has gone drastic changes since then The Bench had no occasion to consider the effect of proviso (a) to R 2 or the order of the Chief Justice dated 29 6-1978 therefore the law laid down in Ballister Singh s case is not applicable to the instant case

11 On a careful consideration of the provisions of the Code relating to filing of appeals hearing and their disposal we are of the opinion that there is no express provision in the Code requiring hearing of an appeal against acquittal by Bench of two Judges S 369 read with S 366 contains mandatory direction that an appeal against sentence of death and proceedings submitted by the Sessions Judge for confirmation of death sentence shall be heard by a Bench consisting of not less than two Judges Apart from this there is no other provision in the Code requiring hearing of appeals filed by the State under S 378 of the Code by a Bench of two Judges In the absence of any such provision under the Code it is permissible to frame Rules under Art 225 of the Constitution providing for hearing of an appeal under S 378 of the Code by a Judge sitting alone A rule framed by the High Court providing for hearing of appeal under S 378

of the Code by a Judge sitting alone is not ultra vires of any provision of the Code In this view the order of the Chief Justice dated 29 6 1978 directing that a Judge sitting alone may hear and dispose of leave matters under S 378(3) and (4) of the Code is not ultra vires of S 368 or 369 or any other provision of the Code

12 The applicants have suffered no prejudice as the appeal against their acquittal has not been heard and disposed of They have ample opportunity to resist the appeal on merits before the Division Bench consisting of two Judges who will now hear the same The Single Judge has merely granted leave to the State and entertained its appeal He has nowhere expressed his opinion on merit The procedure prescribed by the Rules and the order of the Chief Justice do not contravene any provision of law and the order of the Single Judge granting leave does not adversely affect any legal right of the applicants The submission made on behalf of the applicants that proviso (a) to R 2 as well as the order of the Chief Justice dated 29 6 1978 are ultra vires of Ss 368 and 369 is wholly misconceived Ss 368 and 369 do not relate to hearing of appeal against order of acquittal The question whether leave application as contemplated by S 378 of the Code should be heard by a Single Judge or by a Bench of two Judges has no nexus to Ss 368 and 369

13 In the result we are of the opinion that proviso (a) to R 2 of Chapter V of the High Court Rules and the order dated 29 6 1978 are not ultra vires of Ss 368 and 369 of the Code We answer the question accordingly

14 Before parting with the case we think it necessary to observe that even though the order of the Chief Justice dt 29 6 1978 is not ultra vires of Ss 368 and 369 of the Code yet it requires reconsideration in view of the law laid down by the Supreme Court in State of Madhya Pradesh v Dewadas AIR 1982 SC 800 The order of the Chief Justice proceeds on the assumption that the grant of leave is a separate proceeding while the Supreme Court has held that grant of leave is an integral part of the appeal itself An appeal against acquittal under S 378 is heard and disposed of under R 2(vii)(b) by a Bench of two Judges while according to the order of the Chief Justice leave matter is listed before Single Judge for disposal who has power to refuse or grant leave If the Single Judge refuses to grant leave the appeal stands dismissed finally although R 2(vii)(b) contemplates final disposal of an appeal against order of acquittal by a Bench of two Judges This results into anomaly To remove this anomaly it would be just and proper that leave matters should also be disposed of by Division Bench We would suggest that appeals against order of acquittal involving sentence of death or imprisonment for life on trial by the court of Session together with applications for grant of leave should be heard by a bench of two Judges while appeals against acquittal in respect of other offences together with application for leave may be heard by a Single Judge This will need amendment of the Rules We accordingly direct that a copy of this order be placed before the Hon'ble Chief Justice for consideration the matters

15 Let the papers of the case be laid before the appropriate Bench for hearing of the appeal

Order accordingly

1986 ALL L J 46

K N SINGH AND B L YADAV JJ

Islam Petitioner v State of U P and others Respondents

H C Writ Petn No 4028 of 1985 D/ 17 8 1985

National Security Act (65 of 1980), S 3 — Preventive detention under — Power of Court to review

The detenu in the instant case was a boy of 14 employed as a cleaner in a jeep He was hauled with some wire cutters while putting stolen electrical wire in the jeep He had no previous criminal history He was detained by an order under S 3

Held that it is well settled that the satisfaction of the detaining authority cannot be subject to scrutiny on objective assessment The Court cannot review grounds or substitute its own opinion for that of the authority but it does

not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial review Where the authority has not applied its mind at all in such a case the authority cannot possibly be satisfied as regards the fact as to which it is required to be satisfied Similarly the grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached AIR 1975 SC 550 and AIR 1982 SC 1297 Foll (Para 8)

Other persons who were arrested at the spot along with the petitioner are already in detention If that be so how the petitioner on account of his being of immature age could be expected to indulge in activities in future prejudicial to maintenance of supplies and services essential to the community? The detaining authority did not apply his mind to the facts of the case in forming his satisfaction On the facts and circumstances the detention order was wholly unwarranted (Para 7)

Cases Referred	Chronological	Paras
AIR 1982 SC 1297	1982 Cri LJ 1777	7
AIR 1975 SC 550	1975 Cri LJ 446	8

K N SINGH, J — By means of this petition under Art 226 of the Constitution Islam petitioner has challenged validity of his continued detention in pursuance of the order of the District Magistrate Varanasi dt 2 1 1985 issued by him in exercise of his powers under S 3(2) of the National Security Act 1980

2 The order of detention has been passed only on one ground which recites that in the night of 18/19th Oct 1984 the petitioner along with his associates Pyarey Lal Teras Yadav Rajved Yadav Sewalal Bind Ramraj Rambachan Udairaj Bind Ramu Kalwar and Hakim alias Saroj Khan was cutting electricity wire and stealing the same On getting information Station Officer of P S Aurai reached the spot arrested the petitioner and his companions and recovered electricity wire worth Rs 65 000/ along with a diesel jeep A criminal case was registered against the petitioner and his associates at Police Station Aurai for offences under Ss 379/411 IPC The grounds further stated that on account of this cutting of the wire by petitioner and his associates supply of electricity was adversely affected and several acres of land could not be irrigated and some of the village industries were closed on account of non supply of electricity This affected the maintenance of supply and service essential to the community The order further stated that with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of supply and services essential to the community it was necessary to detain him

3 The petitioner submitted a representation to the State Government but the same was rejected and on the recommendation of the Advisory Board the State Government confirmed the petitioner s detention by its order dt 5 2 1985 Initially the District Magistrate had issued an order on 19/20th Oct 1984 in exercise of his power under S 3(2) of the National Security Act (hereinafter referred to as the Act) for the petitioner s detention but since that order could not be approved by the Government within twelve days of the order of the detaining authority it was revoked and a fresh order was issued by the District Magistrate on 2 1 1985 in pursuance of which the petitioner is continuing in detention The validity of the order dated 2 1 1985 has not been assailed before us in view of S 14(2) of the Act which permits making of another detention order in case the earlier detention order falls through on account of the State Government s failure to approve the same within twelve days from the date of the issue of the order

4 The District Magistrate s satisfaction regarding necessity of petitioner s detention was based on the facts recited in the sole ground supplied to the petitioner according to which the petitioner was arrested along with others for cutting and removing electricity wire in respect of which a case under S 379/411 IPC has been registered and after investigation charge sheet has been submitted and the petitioner and others are facing trial before the court The petitioner is aged 14 years so even if he is found guilty of the offence for which he is being tried, he could not be sent to jail in view of provisions of the Children Act 1960 After conviction the petitioner is entitled to be let off with or without admonition If the Court finds him guilty it may release the petitioner on probation for good conduct and

place him under the care of his parents in accordance with S 21 of the Children Act 1960 But under the impugned order of the District Magistrate the petitioner has been kept in detention in jail for the last ten months The legislative policy is clear that a child and specially a child of 14 years should not be sent to jail as there he may fall in the company of criminals and other undesirable persons The legislature intended that such a child should be given opportunity to reform himself and for this purpose provisions have been made in the Act The petitioner s detention is obviously inconsistent with the legislative policy Preventive detention is quite different from punitive detention Preventive detention does not partake in any manner of the nature of punishment The detaining authority is accordingly under a bounden duty to consider the facts and circumstances of the case with abundant caution and care specially in a case where the police submits proposal for the detention of a child of immature age

5 The petitioner is a young boy of 14 years of age He left his schooling after having passed VIII class He took up employment as a cleaner in a jeep As an employee in the jeep he was found present at the spot at the time when the police arrested the gang of wire cutters while he was putting the wire in the jeep According to the police the petitioner was carrying one bundle of wire for placing the same inside the jeep The petitioner being an employee was carrying wire load at the building of his employer for which he is facing trial for offences under S 379/411 IPC The petitioner has no previous history of indulging in any criminal activity and no material has been placed before us which could indicate that the petitioner had tendency of indulging into such activities in future which may adversely affect maintenance of supply and services essential to the community

6 The question which arises for consideration is whether detention of a child of 14 years under the provisions of National Security Act 1980 was warranted There may be cases where on account of criminal activities of a young boy and his involvement in various serious offences indicating repetitive tendency may make it imperative for the detaining authority to pass order detaining him if his activities are found to be prejudicial to public order or maintenance of supplies essential to the public In the instant case it is difficult to conceive that this young boy of 14 years could indulge in activities posing threat to the maintenance of supplies essential to the community There is no material regarding petitioner s involvement in similar activities in the past there is further no material on record or circumstances to suggest that if the petitioner is not detained he would again indulge in similar activities In these circumstances it is difficult to conceive how could a reasonable person form opinion that the petitioner s detention was necessary to be made with a view to prevent him from indulging into similar activities The petitioner s employment as a cleaner in the jeep and the fact that he had no criminal history should have been considered by the District Magistrate having regard to the petitioner s age before passing the detention order It appears that the District Magistrate proceeded to pass the detention order on the basis of the police report in a mechanical manner without scrutinising the facts and circumstances of the case and without applying his mind

7 In Fayam Ali v Home Secy of J & K AIR 1982 SC 1297 detention order was made on the facts constituting offence under Ss 504 and 506 IPC The Supreme Court set aside the detention order and observed

It is not for a moment suggested that the power under the Preventive Detention law cannot be exercised where a criminal conduct which could not be easily prevented checked or thwarted would not provide a ground sufficient for detention under the Preventive Detention laws But it is equally important to bear in mind that every minor infraction of law cannot be upgraded to the height of an activity prejudicial to the maintenance of public order Non application of mind of the detaining authority becomes evident from the frivolity of the grounds on which the detention order is founded

These observations were made in the background of the detention of a school going boy of 17 years of age who was arrested for attacking the conductor of a bus with a dagger In the instant case the petitioner a boy of 14 years is alleged to have been arrested along with a gang of electric wire cutters for which he is being prosecuted We fail to conceive as

to how the petitioner s detention was necessary for maintenance of supplies and services essential to the community It has been brought to our notice that other persons who were arrested at the spot along with the petitioner are already in detention If that be so how the petitioner on account of his being of immature age could be expected to indulge in activities in future prejudicial to maintenance of supplies and services essential to the community The detaining authority did not apply his mind to the facts of the case in forming his satisfaction In our opinion on the facts and circumstances the detention order was wholly unwarranted

8 The object of preventive detention is largely precautionary and based on suspicion If the detaining authority forms requisite satisfaction after considering the relevant material that the detention of a person is necessary the Courts have no power to sit in appeal over the decision of the detaining authority It is well settled that the satisfaction of the detaining authority cannot be subject to scrutiny on objective assessement The Court cannot review grounds or substitute its own opinion for that of the authority but it does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial review In Khudi Ram v State of West Bengal AIR 1975 SC 550 Bhagwati J speaking for the Court observed that the Court can always examine whether the requisite satisfaction is arrived at by the detaining authority if it is not the condition precedent to the exercise of power would not be fulfilled and the exercise of the power would be bad Where the authority has not applied its mind at all, in such a case the authority cannot possibly be satisfied as regards the fact as to which it is required to be satisfied Similarly the grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached In the instant case there was no material before the District Magistrate on the basis of which he could draw the inference that the petitioner s detention was necessary to maintain the supply of essential services to the community The satisfaction of the detaining authority is not based on any material which would indicate that the petitioner had repetitive tendency to indulge into similar activities in respect of which he has been detained The satisfaction of the detaining authority is accordingly vitiated

9 We accordingly allow the petition and quash the impugned order of detention of the petitioner and direct that the petitioner be set at liberty forthwith unless he is required to be detained in connection with some other case

Petition allowed

1986 ALL L J 49

K C AGARWAL AND UMESH CHANDRA JJ

Kaka Singh Petitioner v The Additional Collector and District Magistrate (Finance and Revenue) Bulandshahr and another Respondents

Civil Misc Writ Petns Nos 8110 of 1980 and 2766 3490 and 13188 of 1981 D/ 29-8 1985

(A) Stamp Act (2 of 1899), S 47 A (added by U P Act 11 of 1969) and S 75, Rules made under, R 341 — Market value of property — Determination of — Minimum laid down in R 341 not conclusive — R 341 not ultra vires

Where treating the method of calculation given in R 341 as conclusive and final the Collector found the market value narrated in the sale deeds not to be truthful

Held that the decision of the Collector was erroneous

S 47 A empowers the Collector to deal with those cases where the parties by arrangement deliberately undervalue the property with a view to defraud the Government of the legitimate revenue by way of stamp duty It is not correct that the Collector is not empowered to determine on a case being referred to him by the Sub-Registrar under S 47 A(1) that the market value is in fact less than the minimum value to be determined by R 341 and to find on that basis whether the transaction sets forth the market value truly or not. Similarly the hands and power of the Collector are not confined to the minimum value given in R 341 It can hold it to be more

JC/KC/F573/85/WNG

if it is satisfied on the materials brought before him to that effect.

(Para 14)

The minimum land down in R. 341 is not conclusive or determinative of the controversy. However this can be a circumstance which can be considered along with others.

(Para 15)

R. 341 is not ultra vires being only meant for a limited purpose of providing guideline. It carries out the purpose of S. 47 A.

(Para 18)

(B) Stamp Act (2 of 1899), S. 47 A (added by U. P. Act 11 of 1969) and S. 64 — Powers of Collector — He cannot levy penalty

The legislature under S. 47 A. empowered the Collector to determine the market value of the property which is the subject of conveyance and the duty payable thereon but it did not make any provision empowering the Collector to impose penalty. (Para 17)

Cases Referred	Chronological Paras
AIR 1974 Mad 117	13
AIR 1972 SC 999	6, 14

S. S. Bhatnagar and A. K. Sharma for Petitioner. Standing Counsel for Respondents.

K. C. AGARWAL, J. — These four connected writ petitions raise common questions of law, hence they are being decided by a single judgment. For deciding the points, narration of facts of only one of them namely Writ No. 8110 of 1980 would be sufficient.

2. On 26th June 1979 the petitioner Kaka Singh purchased land under two sale deeds one from Har Pawan Jit Singh, r/o Tugalpur in respect of one half share in Khata No. 371 measuring 10 bighas for Rs. 12,000/- and the other from Gurnam Singh and Gurjendra Singh in respect of 10 bighas 17 biswas 10 biswansis of land for Rs. 10500/. These sale deeds were presented for registration to the Sub-Registrar. Finding that the market value of the land which were the subject matter of the two sale deeds as set forth was less than even the minimum value he referred the sale deeds under S. 47 A of the Stamp Act to the Collector for determination of the market value of such property and the proper duty payable under the said Act. The petitioner filed an objection before the Additional Collector District Stamp officer who issued notice to him. It was stated that the land purchased for the price shown in the sale deeds was proper. It was also asserted that prior to 5th Dec. 1977 the Government price (market value) for the land was Rs. 500/- per bigha. Consequently R. 341 of the Rules framed by the State of U. P. under S. 75 of the Stamp Act would not be applicable. R. 341 provides that for the purpose of payment of stamp duty the minimum market value of immovable property referred to in S. 47 A(1) of the Act shall be deemed to be not less than that as on the basis of the multiples given below:

(1) Where the subject is land —

(a) in case of bhumidhari 800 times the land revenue

(b) in case of sirdari land 400 times the land revenue.

3. Before the Additional Collector the petitioner examined Kishoon Lal, the Lekhpal and one Ramnamch. He also filed extracts of tamil Khatauni showing the price at which the land of the same kind in the vicinity was sold. The Additional Collector repelled the objection of the petitioner by holding that the market value had to be determined at the rate of 800 times of the land revenue under R. 341 of the Rules framed under the Act as introduced in 1976 vide notification No. 1850/X-500(1)-75 dt. 21st June 1976. On the finding arrived at the Additional Collector found the following sale deed executed by Har Pawan Jit Singh:

Sale deed executed for	Rs.	12,000.00
Value of the sale deed determined in accordance with Rule 341	Rs.	25,000.00
Stamp duty	Rs.	975.00
Penalty	Rs.	200.00
Registration Fees	Rs.	130.00

Sale deed executed by Gurnam Singh and Gurjendra Singh:

Sale deed executed for	Rs.	26,500-00
Value of the sale deed determined in accordance with R. 341	Rs.	52,320-00
Stamp duty	Rs.	2,025-00
Penalty	Rs.	325.00
Registration Fee	Rs.	270-00

4 Against the judgment of the Additional Collector the petitioner has come to this Court by means of the present writ.

5 To the maintainability of the writ petition a preliminary objection was raised. The same was that as the petitioner could move an application for reference to the Board of Revenue the writ petition was liable to be rejected on the ground of availability of alternative remedy. We would have accepted the preliminary objection and dismissed the writ petition on that ground but as the petitioner has challenged the validity of R. 341 of the Rules framed under the Stamp Act we thought it advisable to decide the said question. Board of Revenue has no authority to adjudicate the validity of the rule. It is a creature of the Stamp Act and has only those powers which are conferred by it. It cannot examine the validity of the rule.

6 S. 47 A was inserted by means of an amendment. The scheme of S. 47 A of the Act is to deal with those cases where private parties by arrangement clandestinely or fraudulently undervalued the property which is the subject matter of transfer with a view to deprive the government of legitimate revenue by way of Stamp duty. Before addition of S. 47 A there was no provision in the Stamp Act empowering the revenue authorities to make an enquiry of the value of the property conveyed for determining the duty chargeable. S. 27 of the Stamp Act laid down that the consideration if any and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein. In case a person did not set forth true amount for which the transaction had taken place the revenue authorities had no power to proceed with the defaulter. Himalaya House Co. Ltd. v. The Chief Controlling Revenue Authority AIR 1972 SC 899. The Supreme Court held that for the purpose of Art. 23 the value of consideration must be taken to be one as set forth in the conveyance deed. The question whether the purpose of determining the value of the consideration to revenue must have regard to what the parties to the instrument have elected to state the consideration to be.

7 In order to meet such a difficulty and to empower the revenue authority to determine the market value of the property which is the subject of the conveyance, exchange, gift, settlement, award or trust and the duty as payable by the person liable to pay the same that S. 47 A was inserted.

8 Sub-sec. (1) of S. 47 A provides that if the Registering officer finds that the market value of the property as set forth for such instrument was less than even the minimum value determined in accordance with the Rules framed under this Act he shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. Under sub-sec. (2) power has been conferred on the Registering officer to refer the case to the Collector if he finds that the market value has not been truly set forth in the instrument for determination of the market value of such property and proper duty payable thereon. Sub-sec. (3) of S. 47 A provides the procedure which is required to be followed in cases of sub-secs. (1) and (2) of S. 47 A.

9 From the above we find that sub-secs. (1) and (2) of S. 47 A apply to two different situations. In the instant case the Registering Officer was since of the opinion that the market value as set forth in the sale deed was less than even the minimum value determined in accordance with the rules he referred the same to the Collector. Before the Collector the petitioner had filed evidence but by applying the R. 341 the Additional Collector found that the market value set forth in the conveyance was less and thereafter by applying the rule of calculation or computation of the market value stated in Rule 341 he determined the market value of the two sale deeds and found the stamp duty payable thereon.

10 We are of opinion that the Rule 341 which has been relied upon by the Additional Collector has only the limited object of providing guidelines. For invoking sub-sec. (1) of S. 47 A it is not conclusive of the determination of the market value. While determining the question whether the market value has been truly set forth in the instrument the power of the Collector is not confined to R. 341 of the Rules framed under the Act. It can if evidence made available before it establishes determine the market value of the

property which is the subject matter of the conveyance to be more than the minimum given in the rules While determining this question he will have to find that the market value of the property has not been truly set forth in the instrument He will be required to confine his consideration to the particular document which has been presented for registration before him and in that case the limited enquiry to be made by him would be whether the parties to the conveyance or instrument deliberately undervalued it for the purpose of deceitful gain In a case here it is found that the value of the conveyance was fraudulently made although more has passed on it S 47 A would come into play and upon that determination the difference if any in the amount of duty shall be payable by the person liable to pay the duty Fraud comprises all acts and concealments involving a breach of legal duty resulting in damage to the revenue In the case of undervaluation of a document, the intention of the parties is to mislead the revenue by false allegations and by concealment of that which should have been disclosed

11 S 75 of the Act empowers a State Government to make rules to carry out generally the purpose of the Act The purpose of S 47 A is only to avoid evasion of the stamp duty

12 In sub-sec (2) of S 47 A the words important for consideration of its scope are truly and set forth The word truly would empower the Collector to examine whether the market value stated in the document is not in conformity with the fact If a party has agreed to pay more and mentions less in the conveyance of which one of the purposes could be evasion of stamp duty the Collector would be entitled to find the real value for which the property had been sold in that case and after determining the correct value for which the property has been sold to make a demand of the difference of the amount of duty payable as such

13 In State of Tamil Nadu v Chandrasekharan AIR 1974 Mad 117 while dealing with the object of S 47 A the Madras High Court held

We are inclined to think that the object of the Amending Act being to avoid large scale evasion of stamp duty it is not meant to be applied in a matter of fact fashion and in a haphazard way Market value itself as we already mentioned is a changing factor and will depend on various circumstances and matters relevant to the consideration No exactitude is in the nature of things possible In working the Act great caution should be taken in order that it may not work as an engine of oppression Having regard to the object of the Act we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion

14 S 47 A fills in the lacuna which was found by the Supreme Court in Himalaya House Co Ltd v Chief Controlling Revenue Authority (AIR 1972 SC 899) (supra) it empowers the Collector to deal with those cases where the parties by arrangement deliberately undervalue the property with a view to defraud the Government of the legitimate revenue by way of stamp duty It is not correct that the Collector is not empowered to determine on a case being referred to him by the Sub-Registrar under S 47 A(1) that the market value is in fact less than the minimum value to be determined by R 341 and to find on that basis whether the transaction sets forth the market value truly or not Similarly the hands and power of the Collector are not confined to the minimum value given in R 341 It can hold it to be more if it is satisfied on the materials brought before him to that effect R 341 had been framed by the legislature only for the limited purpose of providing a guideline It is not conclusive That being so under sub-sec (1) of S 47 A if the Registering Officer is satisfied that the market value is less than even the minimum value he may refer the document to the Collector for determination of the value of such property This is the only function of R 341 It is neither binding on the person who produces the instrument for registration nor on the State Government

15 Under S 47 A the Collector has the power to determine whether a particular document which is presented for registration is undervalued with a view to evade payment of stamp duty For this purpose he would be

entitled to take into account the minimum prescribed by R 341 as a circumstance But the minimum laid down in the Rule is not conclusive or determinative of the controversy However as stated above this can be a circumstance which can be considered along with others

16 It is true that since there can be no direct evidence of clandestine dealings, finding about evasion can be given by considering the circumstances It may further be stated that determination of undervaluation has to be made with reference to the particular transaction presented for registration If otherwise a document sets forth the amount or consideration truly the Collector will have no power to hold it to have been undervalued on the prevalent market value As there may be cases the sale may take place for a lesser amount than what is the value of a similarly situated property Selling a property at a price lower than the market value is against human behaviour and can be considered as a ground for evasion But this fact should not be made conclusive and should be judged along with others No individual factor in such a matter is conclusive The job of determination is difficult but not impossible of performance Truth can be found despite these odds It is not possible for us to lay down exhaustively as to in which cases evasion could be found and in which it could not be

17 We find force also in the argument of the petitioner s learned counsel that since S 47A does not empower the Collector to impose penalty in the event of his finding that the market value was not truly set forth in the instrument such an order imposing the same would be beyond S 47 A For imposing penalty in a case like the present power was specifically to be conferred In the absence of a specific provision made in that respect, it is not possible to uphold the contention of the Standing Counsel that penalty could be imposed whenever and wherever the Collector under S 47 A finds that the value set forth was not true S 47 A as stated above was brought in recently to cover a case of evasion While enacting S 47 A the legislature although empowered the Collector to determine the market value of the property which is the subject of conveyance and the duty payable thereon it did not make any provision empowering the Collector to impose penalty

18 For what we have said above we find that R 341 is not ultra vires being only meant for a limited purpose of providing guideline It carries out the purpose of S 47 A of the Act Market value by its nature is such which keeps on varying and changing For the purpose of determining duty it is the date on which a document is executed that is to be taken into account The market value has to be determined with reference to that date In the instant case we find that treating the method of calculation given in R 341 as conclusive and final the Collector found the market value narrated in the sale deeds not to be truthful This makes the order and judgment of the Collector to be erroneous It suffers from vice of mistake apparent on the face of the record The Additional Collector also has committed the error of imposing penalty in the instant case In these circumstances the order of the Collector is set aside and the case is sent back to him for a fresh determination of the controversy

19 In the result, the writ petition succeeds and is allowed The order of the Collector is quashed As the question of registration of the document is pending since long the present is a fit case for deciding it expeditiously No order as to costs Stay order is discharged

Petition allowed

1986 ALL L J 53

P S GUPTA AND R P SHUKLA JJ

Virendra Pratap Shahi Petitioner v State of U P and others Respondents

Habeas Corpus Petn No 15596 of 1984 D/ 9 9-1985

(A) National Security Act (65 of 1980), S 11 — Advisory Board — Condition for submitting its report within seven weeks — Period of seven weeks be counted from date of detention and not from date of detention order (Para 5)

(B) National Security Act (65 of 1980), S 3 — Detention under — Grounds — Law and order and public order — Distinction

The distinction between the areas of law and order and public order is one of degree and extent of the reach of the act in question on society It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order If the contravention in its effect is confined only to a few individuals directly involved it distinguished from a wide spectrum of the public it would raise a problem of law and order only AIR 1975 SC 609 Rel on

(Para 9)

Cases Referred Chronological Paras

AIR 1975 SC 609 1975 Cri LJ 886 9

N C Upadhyay and R P Srivastava for Petitioner Dr Govt Advocate for Respondents

R P SHUKLA J — This is Habeas Corpus Petition under Art 226 of the Constitution of India moved by the petitioner Virendra Pratap Shahi (hereinafter referred to as the detenu) challenging the validity of the detention order dated 17th Nov 1984 passed against him by the District Magistrate Gorakhpur (hereinafter referred to as the detaining authority) preventively detaining him under S 3(2) of the National Security Act (hereinafter referred to as the Act)

2 The grounds of detention have been annexed as Annexure 1 to the petition They are as translated in English as follows

(1) That on 6 8 1984 Sardar Ajit Singh resident of Nautanwa District Gorakhpur was killed by Sri Kaushal Tewari son of Sri Hari Shanker Tewari in his Chhaoni village Sunauli Police-station Nautanwa Gorakhpur In this connection you went to Nautanwa on 7 8 1984 and you yourself took the lead of an agitation against this murder and infusing anger in the people you made a declaration of a strong agitation You also appealed to the people to offer a son each to you so that Hari Shanker Tewari and others could be dealt with The above facts are mentioned in daily information diary Local Information Unit Gorakhpur No 45 dated 9 8 1984 Thus you infused fear and terror in the people of Nautanwa and instigated them to indulge in violent acts On 11 8 1984 when the dead body of the aforesaid Ajit Singh reached Nautanwa where the cremation was to take place at 3 30 p m after the post mortem at Gorakhpur a procession of twenty thousand people was taken out in your leadership The procession was led by a jeep on which an effigy of Sri Hari Shanker Tewari was placed It was written on the said effigy Notorious Murderer Hari Shanker Tewari In the right hand of this effigy a like pistol was shown and a like pistol was also shown hanging around the waist A garland of shoes was put on the effigy The following slogans were being raised in this procession

(अ) हरी शंकर की तीन दवाई जुता चप्पल और पिटाई

(ब) नौतनवा ने ललकारा है हरी शंकर हत्यारा है।

(स) कौशलवा को फांसी दो etc etc

3 This procession was taken out throughout the township of Nautanwa The same day at 6 00 p m on the cremation ground at Nautanwa you addressed a meeting of about ten thousand people and delivered inflammatory speech Some extracts of your speech are as follows

The death of Sardar Ajit Singh demands sacrifice and his death has resulted into a new awakening in the people of this place You have made me your representative and therefore I thought that to keep peace in the area I should not use you people but I would settle scores elsewhere but now there will be no delay I myself shall face this terrorist and if the administration does not arrest the murderer of Ajit Singh within fifteen days I shall settle scores with guns You also said that the mistake that has been made is over and now there shall be no delay You also appealed to the people and said that if you have to die die 5 and 10 together You sought the cooperation of the youth and said that how many young lives shall be lost in this agitation cannot be said The effigy of Sri Hari Shanker Tewari was burnt at 8 00 p m in the night near the house of his nephew (sister's son) in the township of Nautanwa The above facts have been mentioned in the Daily Information Diary No 47 dt 14 8 1984 of Information Unit Gorakhpur Thus by the aforesaid inflammatory speech you incited the people to violence and as a result several incidents of violence followed in Nautanwa township They are as follows —

(1) That on 12 8 1984 at about 11 00 a m

the available copies of Daily Jagran were collected from shops and were burnt by your followers who felt that this daily newspaper has shown disrespect to your views The information of this incident was given to the district administrative authorities through C P O Sunauli vide R G No C P O Mis 7 84 dated 12 8 1984

(2) That on 3 9 1984 a public meeting was organized by your supporters at Hanuman Chowk in Nautanwa wherein a threat was extended that they will be compelled to resort to road hold up and other forms of agitation if action was not taken against the murderers of Ajit Singh by 13 9 1984 An entry to this effect was made in the Daily Information Summary Diary No 57 dt 3 9 1984 of Local Information Unit of Gorakhpur As a result of the above threat road hold up agitation started in Nautanwa on 17 9 1984 and it was made to end on 18 9 1984 at 2 30 P M after about twenty seven hours The trains from and to Nautanwa were stopped 198 down train was stopped at Nautanwa and a case under Ss 100B 100 Railways Act dt 17 9 1984 was registered at Anandnagar G R P Gorakhpur at Crime No 630 of 1984 as a result of this the general public was disturbed The traffic came to a stop and the public order was disturbed

(3) That on 17 9 1984 at about 3 00 p m your supporters Sardar Jite Singh Abhilekh Singh Munna Singh Kuldip Singh Sardar Pitti Singh Gulmed Singh Sardar Kul Prasad Singh Sardar Motha Singh along with the hundred persons whose names and addresses were not known were taken in ten trucks and other vehicles to the Chhawani of Hari Shanker Tewari in village Sunauli police station Nautanwa Gorakhpur where they damaged Hari Shanker s Cinema Hall which was under construction and took away the materials like tripal wooden planks iron rods, pipes, wooden poles and cement etc On the report of Vijay Prakash Sharma a case was registered at Crime No 97 of 1984 under Ss 147 327 504 and 506 I P C at Police Station Nautanwa By this incident the people of Nautanwa were terror striken and the public order was disturbed On 18 9 1984 at about 1 00 p m you addressed a public meeting of about one thousand people and you threatened to organize a Sangharsh Samiti which would chalk out the programme of agitation and you will launch a strong agitation if your demands were not fulfilled Thus you instigated the people to violence The above fact is mentioned in the Daily Information Summary No 63 of 19 9 84

(4) On 20 8 1984 at 5 00 p m you along with your associates Kunwar Akhilesh Singh Sardar Surjeet Singh Sardar Seeta Singh Sheo Bahadur Singh Bachcha Singh Rana alias Tada Anirudh Jaiswal and 10-12 others, whose names and addresses are not known armed with weapons went to Adda Bazar on a jeep and motor cycles and reached the place where Shri Durga Shanker Pandey Block Pramukh Lavmpur was sitting with the two body guards You got down from the jeep and asked your associates to surround him Your associates jumped off their vehicles and Shri Akhilesh Singh fired at Durga Shanker Pendey The others also started indiscriminate firing Ram Bilas Dhobi got injured and fell down Complainant Durga Shanker Pandey somehow saved himself by hiding in a shop You people held Durga Shanker Pandey s body guards Kushhar Prasad and Janakdeo who were sitting with rifles and gun and took them away

4 On the report of Durga Shanker Pandey a case was registered at Crime No 81 A of 1984 under Ss 147 148 149 307 and 342 I P C As a result, terror prevailed in Nautanwa and public order was disturbed

5 Being subjectively satisfied on the basis of the aforesaid grounds the detaining authority passed the detention order on 17 11 1984 which was served on the detenu on 19 11 1984 It has been contended on behalf of the detenu that under S 11 of the National Security Act the Advisory Board shall after considering the materials placed before it and after calling for such further opinion as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned and if in any particular case it considers it essential so to do or if the person concerned desires to be heard after hearing in person submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned and according to the learned counsel for the detenu the Advisory Board has taken more than seven weeks in the instant case therefore the detention order is liable to be quashed The detention order became effective only on 19

11 1984 The Advisory Board submitted its report on 7 1 1985 Eleven days of the month of Nov 1984 added to thirtyone days of the month of Dec 1984 and if 7th is left six days of the month of Jan 1985 would make fortyeight days and if 7th is also included that would amount to fortynine days In any case the report of the Advisory Board was submitted within seven weeks from the date of detention The learned counsel wrongly counted the days because instead of from the date of detention he started counting from the date of detention order Thus the report of the Advisory Board was submitted within seven months as required by S 11(1) of the National Security Act and the contention on behalf of the detenu has no force

6 The second contention on behalf of the detenu is that all the grounds of detention order are problems of law and order and not of public order The scrutiny of each ground with a view to find out if the same has potentiality to disturb the public order is essential The ground No 1 comprises of four different parts The first part relates to the murder of Sardar Ajit Singh of Nautanwa by Sri Kaushal Tewari son of Sri Hari Shanker Tewari The detenu went to Nautanwa on 7 8 1984 and took the lead of an agitation against this murder The detenu was and still is a member of U P Legislative Assembly Nautanwa to which the said deceased belonged is a part of the Constituency of the detenu It is said in this part of the ground that the detenu appealed to the people to offer a son each to him so that he could face people like Hari Shanker Tewari and others There is nothing in this part of the ground to infer that the detenu created fear and terror in the people of Nautanwa At the most his appeal to the people means that he desired a strong organization to face the people like the murderer of Ajit Singh In the second part of this ground it is said that the detenu led a twenty thousand strong procession with the effigy of Hari Shanker Tewari placed on a jeep and the third part relates to the speech of the detenu on the cremation ground which was attended by ten thousand people In the said meeting the detenu declared that he would settle accounts with guns if the district administration would not arrest the murderer of Ajit Singh within fifteen days He also asked the people that they should die 8 10 together if they have to die He further said that he could not say as to how many young lives would be lost in that agitation None of the aforesaid utterances of the detenu can be said to be inciting the people to resort to violence Since the detenu represented that area in the U P Vidhan Sabha he could not shut his eyes on the incidents of murder as aforesaid He not only tried to pacify the people but also attempted to discipline the emotional upsurge of the people of Nautanwa so that they would not indulge into unlawful activities By giving fifteen days time to the district administration to arrest the murderer of Ajit Singh he not only made the people to be quiet for the next fifteen days but also set the ball rolling in the court of the district administration It was for the district administration to be active and efficient to arrest the murderer of Ajit Singh To settle accounts with guns was a conditional declarations and therefore it was for the administration to see that those conditions could not prevail when the detenu had to resort to violence i e the district administration had to be alert and efficient in bringing to book the murderer of Ajit Singh When the people are already emotionally surcharged a public speaker has to make some emotional outbursts to win their confidence or to create a feeling that he is one of them with a view to enable himself to discipline their emotions by being one of them In spite of the emotional outburst that the detenu would settle accounts with guns he had made the people to keep quiet for fifteen days to come There appears to be nothing inflammatory in this part of the ground The effigy of Hari Shanker Tewari was burnt the same night at 8 00 p m near the house of his nephew (sister s son) Even this act of leading the procession with the effigy of Hari Shanker Tewari and burning the same near the house of his nephew has no potentiality to disturb the public order It has no reach to the society at large The last part of this ground relates to burning of all the available copies of daily Jagran by the supporters of the detenu A perusal of the information reported through C P C /Misc 7/84 dt 12 8 84 in this regard reveals that hundred sympathizers of Ajit Singh under direction of Akhilesh Singh burnt the Daimik Jagran papers after collecting from shops in protest of their demands Situation remained peaceful These entries do not indicate the

involvement of the detenu in this incident. Thus the Ground No 1 does not make out a case of public disorder

7 Ground No 2 relates to a public meeting held at Nautanwa Chowk on 3-9 1984 by the supporters of the detenu wherein threats were extended for train holdup and road blocks etc It is not said that the detenu was present in this meeting nor it is said that he was a party to the decisions taken in this meeting There is absolutely no material to concoct the organizers of this meeting with the detenu It is also not said that the detenu participated in the road blocks or train holdup nor he has been named in the case registered at Crime No 650 of 1984 in this connection nor it is said that the above decision was taken or implemented at the exhortation of the detenu Under the circumstances we are constrained to hold that the ground No 2 does not depict any picture that the detenu was present in the said meeting, or was a party to the decisions therein or in their implementation and therefore the detention on this ground cannot be valid

8 Ground No 3 can also be divided into two parts The first part relates to an incident dt 17 9 1984 registered at Crime No 97 of 1984 under Ss 147 379 427 504 and 506 I P C Even in this incident the detenu is not one of the participants nor there is any material to connect participants with the detenu There is nothing to show that this incident was a result of the exhortation of the detenu and therefore this part of the ground is not relevant to the detention order The second part of this ground relates to a public meeting attended by one thousand people on 18 9 1984 at 1 00 p m held in the township of Nautanwa This meeting was addressed by the detenu who declared in the meeting that he would organize an action committee which would chalk out the programme of the agitation and that the detenu would lead a strong agitation We do not find any thing in this part of the ground to infer that the detenu incited the people to violence Thus considering the Ground No 3 as a whole we are of the opinion that the detention of the detenu cannot be sustained on this ground

9 Ground No 4 relates to an incident dated 20-8 84 when the detenu along with his associates named in the ground all armed with weapons attacked Durga Shanker Pandey Block Pramukh, Laxmipur at about 5 00 p m However Durga Shanker Pandey escaped unhurt His two body guards were unlawfully detained by the detenu and his associates A case was registered at Crime No 81 A of 1984 under Ss 147 148 159 307 and 342 I P C against the detenu and his associates The distinction between the areas of law and order and public order is one of degree and extent of the reach of the act in question on society It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public it would raise a problem of law and order only The aforesaid observation flows from their Lordships of the Supreme Court in Ram Ranjan Chatterji v State of West Bengal AIR 1975 SC 609 The analysis of the Ground No 4 in the light of the above observations makes it clear that the aforesaid Ground No 4 relates only to law and order and it has no potentiality to disturb the public order and therefore the detention of the detenu cannot be upheld even on this ground

10 It has been urged by the counsel for the detenu that heavy costs be awarded to the detenu We have given our very anxious consideration and are of opinion that no case for awarding costs is made out

11 In the result the petition succeeds and is allowed The respondents are directed not to keep Virendra Pratap Shahi detenu under detention any longer in pursuance of the detention order dt 17 11 1984 passed by the District Magistrate Gorakhpur under S 3(2) of the National Security Act and affirmed by the State Government It is made clear that if the petitioner s detention is required under some other authority of law the order passed by us shall not entitle him to be physically released

Petition allowed

1986 ALL. L. J. 58

N. N. SHARMA, J.

Kirti Singh and another, Appellants* Het Singh and others, Respondents

Second Appeal No. 1695 of 1974 D/- 1-7-1985.

U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) Ss. 331 A and 229 B — Plaintiff in possession of holding — Interference with possession by defendant — Suit for injunction — Suit is not barred under S. 331 A. (Civil P. C. (5 of 1908) S. 9 (a) Specific Relief Act (47 of 1963) S. 10)

The plaintiff alleged that he was Sirdar of plots in dispute and was in possession and was recorded as such in revenue records. The suit was brought seeking relief of perpetual injunction restraining defendants who were members of Gram Sabha from interfering with his possession over the holding. He amended the plaint to the effect that he was dispossessed from portion of land during pendency of suit and hence he sought further relief of possession through amendment. The suit was decreed and was affirmed in appeal.

Held that the suit was not barred by S. 331 A and hence the order was legal. Case law discussed. (Para 31)

In the instant case plaintiff had no grievance against village record and so was not under the necessity to file a suit for declaration in revenue court under S. 229 B. Obviously the relief for perpetual injunction was not available by revenue Court. So relief for declaration was also sought by plaintiff against Gram Sabha or the State Govt. (Paras 24, 25, 26)

Further, the mere fact that the lower appellate court also found that the plaintiff's claim was supported by the entries in revenue papers and the reports of revenue authorities that the land was Abadi and he is the owner of the same, did not change the nature of the suit. The relief was triable on the allegations made in the plaint itself by the Civil Court. (Para 31)

Cases Referred Chronological Paras

1982 All LJ 984 1983 RD (HC) 41	25
1983 All LJ 371 1982 RD (HC) (LB) 165	26
1981 U. P. L. R. (NOC) 130 1981 All WC 161	22
(1970) All LR 94	21
AIR 1977 NOC 149 (Alb) 1977 RD (HC) 165	26
AIR 1977 All 340 1977 All WR 248	14
1970 RD (HC) 216	27
1986 All LJ 677 1986 All WR (HC) 367	28

Prakash Chandra for Appellants; Vem Prasad Agarwal and Gyanendra Nath Verma for Respondents

JUDGMENT — This is a defendants' appeal directed against the judgment and decree dt. 9-5-1974 recorded by Sri U. C. Dikshit learned Civil Judge, Agra who dismissed Civil Appeal No. 40 of 1973 and affirmed the judgement and decree dt. 14-12-1973 recorded by Sri A. S. Shukla learned Sr. Additional Munsif, Agra who decreed the Original Suit No. 272 of 1967 with costs.

2. The relevant suit was filed in the court of Munsif, Agra on 4-6-1967.

3. Plaintiff is Het Singh. Defendants were Mangli and Bhola. Mangli died pending the proceedings and his heirs have been substituted vide order dt. 9-8-1967.

4. Plaintiff alleged that he was Sirdar of plots Nos. 40, 41M and 43 corresponding to old plots Nos. 69, 70, 1Kh, 70, 1Kh and 70/3 situated in village Shiv Singh, Pargana Etmadpur, district Agra.

5. Plaintiff alleged that he was in possession of the plots in dispute and was recorded as such in the revenue record.

6. The aforesaid holding was not included in the consolidation operations and plaintiff continued to be in possession over the same as Sirdar even after the consolidation operations.

7. Plaintiff cultivated the said plots and grew crops over the same.

8. In 1974 Rabi plaintiff had sown peas crop in the aforesaid plots and had reaped it. Pradhan and other members of the Gram

*Against order and decree passed by Civil J. Agra, D/- 9-5-1974.

Sabha hereinafter will know as the plaintiff and in order to impute him defendant 1 (Munshi) who was a Member of Gram Sabha alleged in the village that the plots in dispute were the property of Gram Sabha and the defendants alleged to have taken a portion of this holding from Gram Sabha in public auction. Such auction sale was invalid and illegal. Defendants intended to dispossess the plaintiff from the plots in dispute and so the only relief sought was for a perpetual injunction restraining the defendants from interfering in his possession over the said holding.

9 On 19.11.1969 through leave to amend paper No. 8(49) it was pleaded that pending the suit plaintiff was dispossessed by defendants from the northern portion of plot No. 41 by raising a platform and placing cattle trough over the same illegally and without the consent of plaintiff and the relief for possession was further sought through the said amendment.

10 Two parties written statements were filed by defendants who raised various pleas. There was also a plea about lack of jurisdiction.

11 Both the courts below found that the plaintiff was Sirdar of the land in suit. It was further found by learned appellate court that the plaintiff was owner of the disputed land which was excluded from the consolidation operation as Abadi land. The alleged auction sale had already been cancelled by the revenue court. The civil court had jurisdiction to try the suit. In the result the claim was allowed as given above.

12 I have heard learned counsel for parties and perused the record.

13 On behalf of appellants it was argued that the point of jurisdiction of the court was determinable on the averments made in the plaint and not on the facts proved during the proceedings. On this point reliance was placed on Municipal Board, Faizabad v. Edward Medical Hall, Faizabad reported in AIR 1976 All 349 (LB).

14 Reliance was also placed upon Khurshid v. Badri reported in 1973 All WR 248 in support of the contention that acquiescence or consent of parties could not confer jurisdiction on a court which lacks inherent jurisdiction and a decree passed without jurisdiction was nullity.

15 In support of his contention that the appellate Court could not record a finding that the disputed land was an Abadi land and owned by plaintiff when such claim was not set out by the plaintiff in plaint reliance was placed upon Chela Meri v. Moh. Immad Abdul Khair Khan reported in AIR 1976 P.H. 92 and Ramdha Singh v. Achal Singh reported in AIR 1961 SC 1097.

16 Thus the main contention put forward on behalf of appellants was that the relief for declaration was involved in the suit. Such declaration was awardable by a revenue court alone under Section 229 B of U.P. Zamindari Abolition and Land Reforms Act (Act No. 1 of 1951). Section 331 A bars the cognizance of such suit by Civil Court. The character of the holding as Abadi had not been so declared by Assistant Collector in charge of the sub division under section 143 of the aforesaid Act. So the claim should not have been decreed and such decree for recovery of possession by a civil court was simply a nullity.

17 Learned Advocate for appellants also relied upon Ram Achal v. Shashi Bhushan Tewari reported in 1974 RD 388 (LB) which dealt with a suit for recovery of possession against a trespasser in respect of agricultural land and it was held that the suit was not cognizable by Civil Court and such question of jurisdiction could be raised for the first time in appeal also.

18 Learned Advocate for appellants also relied upon Chandra Nath v. Mool Chand reported in 1976 All WC 537 in support of his argument that in a suit for permanent injunction filed by plaintiff with allegation that he was Bhumidhar of agricultural plot in dispute and that the defendant was interfering with his possession and trying to dispossess him forcibly, no suit for perpetual injunction could have lain in a Civil Court.

19 A look at the facts of that case shows that there was a dispute regarding the entries made in revenue papers in favour of defendants and such dispute was pending in the Board of Revenue. The real cause of action was a declaration that the plaintiff was a Bhumidhar of the land in dispute. The plaintiff

camouflaged the relief and sought a permanent injunction with a purpose to oust the jurisdiction of the revenue Court and seek his remedy in the Civil Court Such device was held as impermissible

20 Learned Advocate for appellants further relied upon a division bench case reported in Chandrika Misir v Bhaiya Lal 1973 RD 365 (AIR 1973 SC 2464) In that case a suit was brought by plaintiffs appellants who were the next reversioners to the Bhumidhar for permanent injunction or in the alternative for recovery of possession It was held that the suit was cognizable by Revenue Court and Civil Court lacked inherent jurisdiction to try the same

21 On behalf of respondent, it was pointed out that such contention was not open to the learned Advocate for appellants unless his objection about the jurisdiction was raised at the earliest and unless it was shown that there was a failure of justice vide Section 21 of Code of Civil Procedure vide General Equipment Mart v Union of India reported in (1979) 5 All LR 94 In that case there was a dispute about the place where the suit had to be filed and no objection was raised by defendants about the jurisdiction of the court it was held that such objection could not be raised for the first time before the appellate or revisional Court Learned Advocate for respondent also cited Lekhraj Singh v Ram Das Singh reported in 1983 All WC 94 in support of such contention

22 Sabha Chand v Narayan Singh reported in 1981 AWC 161 was also relied on to explain the underlying principle under S 331A of U P Zamindari Abolition and Land Reforms Act which reads as below —

S 331 A Z A Act lays down that it is not open to a party to raise the question of absence of jurisdiction unless the objection was taken by it in the court of first instance at the earliest possible opportunity or before the settlement of issues Even if such an objection is raised the party has further to prove that there has been failure of justice and he suffered on account of the Civil Court taking cognizance of the suit Two conditions must be satisfied before the question of jurisdiction can be raised before an appellate or revisional Court Firstly the objection must be taken before the trial court at the earliest stage and secondly the party must show that there has been failure of justice on account of the suit being tried by the Civil Court

23 I have carefully considered these rival contentions

24 The conspectus of facts laid above shows that the only relief sought in the plaint was for perpetual injunction The relief for recovery of possession was added subsequently through an amendment and the courts below concurrently found that the plaintiff was dispossessed from a portion of plot No 41 pending the suit only Obviously the relief for perpetual injunction was not awardable by a revenue court

25 The point of jurisdiction was raised before the trial court also The contention raised on behalf of appellants was that the civil court had no jurisdiction as the relief for cancellation of the auction sale in favour of defendants was involved in it However in view of the admission of defendants in part 15 of the written statement it was obvious that the auction sale had already been quashed by the revenue court and no declaration was sought within the meaning of Section 229 B of the aforesaid Act

26 It has also been shown that the plaintiff's consistent case was that the revenue entries in extracts of Khatauni Khasra and the report of Naib Qanungo and Sub Divisional Officer disclosed that it was the tenure of plaintiff who was in exclusive possession thereof Gram Sabha had nothing to do with it So such suit was perfectly cognizable by a Civil Court as was held in Raj Bahadur Singh v Smt Gaura alias Ram Piari reported in 1977 RD (HC) 166 which posited —

In a situation where the recorded tenure holder is in possession and such a recorded tenure holder is disturbed in possession it is not obligatory that he should file a suit under S 229 B of the U P Act 1 of 1951 in the revenue court Merely because in the written statement a defendant chooses to question the plaintiff's recorded tenure holdership it cannot be said that a genuine controversy about tenancy rights is involved

In the instant case the plaintiff was recorded as a tenure holder in the revenue papers and she claimed to be in possession which has

been found to be a fact by the courts below There is no reason why the recorded tenure holder should be compelled to file a suit for declaration in the revenue court On the facts of the instant case the plaintiff respondent was not obliged to file a declaratory suit under Section 229 B of the U P Zamindari Abolition and Land Reforms Act 1951

The Civil Court had jurisdiction to try the suit for permanent injunction restraining defendants from interfering with the possession of the plaintiff over Bhumidhari Plots

27 In the instant case plaintiff had no grievance against village record and so was not under the necessity to file a suit for declaration in a revenue court as held in Parsottam v Narottam reported in 1970 RD (HC) 216 which posited —

U P Zamindari Abolition and Land Reforms Act 1 of 1951 S 229 B — Suit under S 229-B — Maintainability in revenue court — Legal position lies in revenue court if plaintiff has grievance against village records — Suit for injunction restraining defendants from interfering with plaintiff's possession over the plot in suit — Entries in revenue papers supporting plaintiff's claim No relief claimed against Gaon Sabha or State Government nor plaintiff obliged to do so — Suit would be cognizable by civil court

The legal position appears to be that where a plaintiff has grievance against the village records which are maintained by the State Government and Gaon Sabha the suit will lie in revenue court under S 229-B and any other person who disputes the plaintiff's title shall also be impleaded as a defendant but if the village records support the claim of the plaintiff the suit will not lie under S 229 B but will be cognizable by a civil court in case the plaintiff's right is disputed by a third person

28 A similar view was taken in Lekhraj v Board of Revenue U P Lucknow reported in 1983 RD (HC) 41 which posited —

U P Zamindari Abolition and Land Reforms Act 1 of 1951 S 229 B — Maintainability of dismissal of objection under O 21 R 58 C P C — Suit contemplated under O 21 R 63 — Suit is cognizable by Civil Court and suit under S 229 B is not maintainable — Limitation for such suit is one year

In Rameshwar v Ram Asrey reported in 1965 All LJ 677 it was laid

It is declaratory suit against the landholder or the State Government and the Gaon Samaj which has been taken away from the jurisdiction of the civil court and not every suit for declaration To put it differently if it be found that in substance declaration is being asked for against the landholder in the instant case the State Government and the Gaon Samaj and they are necessary parties to the suit the civil court shall not have the jurisdiction to entertain such a suit for declaration and also a suit in which a relief for injunction with regard to that plot based on the same cause of action has been prayed for But if the facts indicate that the land holder or the State Government and the Gaon Samaj as the case may be do not challenge the status of the plaintiff or on the basis of the entries existing in the village record the plaintiff continues to enjoy the status claimed by him, the suit for declaration cannot be deemed to be against the landholder or the State Government and the Gaon Samaj and consequently shall be cognizable by the civil court on account of its jurisdiction not being taken away by order under the U P Zamindari Abolition and Land Reforms Act

The plaintiff enjoyed the status of a sirdar and consequently it was not necessary for him to sue the State Government and the Gaon Samaj for a declaration of his rights as such When it was not necessary for the plaintiff to sue the State Government or the Gaon Samaj he could ask for a declaration against a third party without impleading them and such a declaratory suit could be taken cognizance of by the civil court In the circumstances the civil court could entertain a suit for injunction against the third party alone based on the same cause of action

29 It has been shown above that no relief for declaration was sought by plaintiff against Gaon Sabha or the State Government in this case In Bajrang Bali v Ist Addl District Judge reported in 1982 RD (HCLB) 165 a suit was filed under S 6 of Specific Relief Act for recovery of possession It was held that S 331 of U P Z A and L R Act did not operate as a bar to such suit and was triable by civil court

30 Learned lower appellate court relied upon a Full Bench case reported in Ram Awalamb v Jata Shankar 1968 All LJ 1108

(AIR 1967 All 391) It has been shown above that the only relief sought by plaintiff in his plaint is the title of institution of the suit was for perpetual injunction. It was subsequently that the relief for possession which flowed from the cause of action filed in the plaint was also sought. Under such circumstances the suit was perfectly cognizable by civil court.

31 The mere fact that the learned lower appellate court also found that the plaintiff's claim was supported by the entries in revenue papers and the reports of revenue authorities that the land was Abadi and he is the owner of the same did not change the nature of the suit. The relief was available on the allegations made in the plaint itself.

32 Under such circumstances the above said contentions raised by learned counsel for the appellants are ruled out.

33 The next contention was that the defendants 3 and 4 were minors and no guardian ad litem has been appointed. It appears that such contention was never raised before the courts below. No evidence was adduced in defence about the point of their ages. The contesting defendants viz. 1 and 2 were majors and so there was no question of appointment of their guardian ad litem.

34 In the result I do not find any merit in this appeal which is dismissed. Costs as.

Appeal dismissed.

1986 ALL L J 62

(LUCKNOW BENCH)

S. SAGHIR AHMAD, J.

Jadu Das Mukerji, Petitioner v. IVth Additional District Judge, Lucknow and others, Respondents.

Writ Petn. No. 6327 of 1983 D/- 6.11.1984.

(A) U.P. Urban Buildings (Regulation of Letting, Rent and Eviction), Act (13 of 1972), S. 21 — Lease — It is transferable and heritable right — Lease from month to month immaterial

A lease which connotes transfer of an interest in immovable property is a heritable right. Even a lease from month to month is a heritable interest. Thus where a tenant dies his rights will be inherited by his heirs. Where there was a lease in favour of a single person as a tenant, the interest of that person in the said lease would on his death devolve on his heirs. The liability of the heirs to pay the rent would be a joint liability. An inter se management among the joint tenants would not affect their liability qua the lessor for the payment of the whole rent. (Para 6 and 7)

(B) Transfer of Property Act (4 of 1882), S. 111(e) and 111(f) — Surrender — Whether question of fact or law

Surrender is often a question of fact depending upon the intention of the parties which can be inferred from their conduct. It may, however, be a question of law if their conduct necessarily implies surrender. Mere non payment of rent does not constitute implied surrender. (Para 10)

(C) U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S. 41 — U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules (1972), R. 8(2) — R. 8(2) is mandatory

The provisions of sub-r. (2) of R. 8 providing for the manner in which building is to be inspected are mandatory and any departure from that procedure may vitiate the inspection report. (Para 22)

In the instant case the inspection was made in the absence of the tenant. The premises in question was reported to be locked. The report did not say that the Inspector made any other attempt to inspect the premises in the presence of the petitioner. The Inspector had come to know at the spot that some person had put a lock on the premises in question. The Inspector had also come to know that he lived at a certain place which was his own house and that he was son in law of the petitioner. Held that the report could not be relied upon without looking into the objections raised by the petitioner against the said report when the petitioner in his affidavit had seriously questioned the correctness of the report when it was stated in the affidavit that the Senior Inspector had not contacted the petitioner who was the tenant of the building and was

living therein for the last 60 years since the time of his father tenant who was the original tenant and it is stated that the report was a false report and had not been prepared in accordance with the provisions of R 8(2)

(Para 23)

(D) Constitution of India, Art 226 — Writ petition — Interference — Suit for eviction — Finding recorded by District Judge that tenant had his own house in city based on no evidence — District Judge blindly relying upon report of Inspector — Finding that tenant had impliedly surrendered his tenancy based on total misappreciation of true legal position — Findings set aside (U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 21) (Para 26)

Cases Referred	Chronological	Paras
AIR 1984 All 30		8 12
1982 UPLT NOC 41	1982 (UP) RCC 303	4 13 14 20 26
AIR 1980 All 266		12
1978 All LJ 215		12
AIR 1971 SC 1537		25
AIR 1970 SC 1334	1970 Lab IC 1071	25
AIR 1967 Pat 35		12
ILR (1964) 1 Mad 443	76 Mad LW 431	11
AIR 1956 SC 463		25
(1952) 2 All ER 492	(1952) 2 QB 788 (1952) 2 TLR 401 (CA) Leek and Moorlands Building Society v Clark	11
AIR 1951 SC 186		7
AIR 1949 Mad 618		7
AIR 1939 Oudh 257		12
AIR 1928 All 534		7
AIR 1920 Mad 509		7
AIR 1914 Lah 500		7
(1907) 11 Cal WN 1026		7
(1896) ILR 18 All 290	1896 All WN 56	12
(1879) ILR 4 Cal 314	3 Cal LR 119	12

Robin Mitra for Petitioner Ashok Nigam (for No 3) L P Shukla and K D Nag for Respondents

ORDER — By this petition under Art 226 of the Constitution the petitioner has questioned the correctness of the judgment and order dt 30 8 1983 passed by the IV Additional District Judge Lucknow by which the order dt 27 9 82 passed by the Additional District Magistrate (Civil Supplies) Lucknow was set aside and the disputed premises No 32 Aminuddaula Park Lucknow was held to be vacant

2 The facts leading rise to this petition are these Premises No 2 Aminuddaula Park Lucknow was previously owned by Rani Ahmadi Begum of Salemour It was let out to Babu Hazari Lal Mukerji petitioner's father about 60 years ago The property was subsequently transferred to Pandit Ram Shanker Misra Trust (opposite party No 3) (hereinafter referred to as the Trust) but Babu Hazari Lal Mukerji continued to occupy the premises as a tenant On his death the tenancy rights devolved upon his two sons Dr J P Mukerji and J D Mukerji (petitioners) who continued to live there jointly Dr J P Mukerji who used to pay the rent to the Trust and in whose name the rent receipts were issued died issueless on 2 6 78 He was a bachelor The Trust then made an application under S 16 of the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 (for short the Act) for release of the said premises in its favour A number of persons also applied for its allotment A report was obtained from the Rent Control Inspector who stated that the premises in question was in the tenancy of Dr J P Mukherji who died issueless It was also stated that one S N Banerji who was son in law of Dr J P Mukherji's brother had put a lock on the premises The vacancy was consequently notified It was at this stage that the petitioner filed objections on 18 9 78 These objections were supported by an affidavit in which it was stated by the petitioner that he had all along been living in the premises in question since the time of his father late Babu Hazari Lal Mukerji who was the original tenant and on whose death the tenancy rights were inherited by the petitioner as also by his younger brother Dr J P Mukherji It was also stated that a ration card was issued to the petitioner in Nov 1975 in which the petitioner's address was shown as 32 Aminuddaula Park Lucknow and petitioner's brother Dr J P Mukerji was shown as member of the petitioner's family The correctness of the Inspector's report was questioned in the said affidavit in which it was stated that the Senior Inspector had wrongly reported that the petitioner's son in law Sri S N Banerji had put his lock on the premises in question It was stated that the Senior Inspector had not complied with the mandatory requirement of R 8(2) of the Rules framed under the Act The petitioner also

filed affidavits of a number of persons in support of his contention that he had been living in the premises in question with his younger brother Dr J P Mukherji He also filed a good number of documents to show that he was in occupation of the premises in question in his own rights since before the death of Dr J P Mukherji

3 Opposite party No 3 on the other hand asserted that the petitioner was an unauthorised occupant as he was neither the family member of Dr J P Mukerji nor did he ever live with him It was pointed out by the Trust that the petitioner earlier lived with his son in law at Faizabad Road and then he shifted for a short period to some house near Charbagh Railway Station Petitioner s son who was employed in the military was also said to be in possession of a house in the Cantonment area of the city The Trust also pleaded its own need for the house in question and prayed that it may be released in its favour The Additional District Magistrate (Civil Supplies) Rent Control Lucknow on a consideration of the material on record allowed the objections of the petitioner and the order dt 28 8 78 by which the vacancy was declared in the house in question was withdrawn The release application as also the application for allotment were consigned to record This order was challenged by the Trust in the revision filed under S 18 of the Act It was allowed by the learned IV Additional District Judge on 30-8 83 with the finding that the petitioner shall be treated to have impliedly surrendered his tenancy and that Dr J P Mukherji alone was the tenant and on his death since he did not leave any heir as he was a bachelor the house became vacant and available for release as also for allotment The learned IVth Additional District Judge consequently remanded the case to the Additional District Magistrate (Civil Supplies) for further proceedings in accordance with law from the stage of vacancy It is this judgment which has been challenged in this petition

4 Learned counsel for the petitioner contended that the tenancy rights had also devolved on the petitioner in his capacity as the heir of Babu Hazari Lal Mukerji who was the original tenant of the premises in question and the petitioner being in continuous possession jointly with his brother Dr J P Mukherji the premises were not vacant That being so the release application filed by the Trust (opposite party No 3) as also the applications for allotment made by certain prospective tenants were liable to be rejected and the learned Additional District Judge was wrong in remanding the case to the Additional District Magistrate (Civil Supplies) for consideration of those applications It has also been contended on behalf of the petitioner that the learned Additional District Judge was patently in error in blindly following the decision of this Court in Sultan v Ist Additional District Judge Meerut 1982 (U P) RCC 702 (1982 UPLT NOC 41) which was not applicable to the facts of this case as the petitioner merely on the basis that the rent of the premises was also all along being paid by this brother Dr J P Mukerji could not be said to have impliedly surrendered his tenancy rights

5 Learned counsel for the Trust has on the contrary submitted that the findings recorded by the learned Additional District Judge were findings of fact which were based on a proper evaluation of the evidence on record and as such it was not open to this court to interfere with those findings in the present proceedings under Art 226 of the Constitution and a writ of certiorari cannot be legally issued to quash the judgment of the learned Additional District Judge It has also been submitted that the findings recorded by the learned Additional District Judge were correct as the petitioner in the circumstances of the case shall be deemed to have impliedly surrendered his tenancy rights with the result that on the death of Dr J P Mukerji the premises in question became available for release/allotment

6 A lease which connotes transfer of an interest in immovable property is a heritable right Even a lease from month to month is a heritable interest Thus where a tenant dies his rights will be inherited by his heirs

7 It has been held by the Madras High Court in Krishna Bhatta v Narayana Acharya AIR 1949 Mad 618 that where there was a lease in favour of a single person as a tenant the interest of that person in the said lease would on his death devolve on his heirs The liability of the heirs to pay the rent would be a joint liability This is in consonance with the

decision of the Supreme Court in Badri Narain Jha v Rameshwar Dayal Singh AIR 1951 SC 186 in which it was held that an inter se arrangement amongst the joint tenants would not affect their liability qua the lessor for the payment of the whole rent (see also Har Swarup v Tohla Singh AIR 1928 All 534 and Singaraja Venkatasu Subbaramaiah v Velugoti Govinda Krishna AIR 1920 Mad 509) The liability of the heirs being joint and several a suit against one of them for the whole of the rent was held to be maintainable vide Calcutta High Court s decision in Jogendra nath Roy v Nitendra Narain Nandi (1907) 11 Cal WN 1026 at 1028 and Livingstone v Feroz Din AIR 1914 Lah 500

Section 111 of the Transfer of Property Act provides that a lease of immovable property determines —

(a)

(b)

(c)

(d)

(e) by express surrender that is to say in case the lessee yields up his interest under the lease to the lessor by mutual agreement between them

(f) by implied surrender

(g)

(h)

Surrender is the yielding up of an interest in the immovable property which was transferred to a person under a lease A surrender can be made only to the lessor It can be an express surrender as provided by cl (e) and an implied surrender as provided by cl (f) of S 111 Implied surender is in English Law known as surrender by operation of law Implied surrender occurs either by creation of a new relationship or by relinquishment of possession

8 A Division Bench of this court in J J Pancholi v Sridharjee AIR 1984 All 130 has held that S 111(f) of the T P Act provides for the determination of a lease of immovable property by implied surrender If a lessee accepts a new contract of tenancy it operates as surrender of old tenancy for a lease cannot be granted unless the old tenancy is surrendered Such a surrender takes place by operation of law An implied surrender can be inferred from unequivocal conduct of both the parties

9 It is to be noted that in the above case an altogether new lease was substituted in place of the original contract of tenancy

10 Surrender is often a question of fact depending upon the intention of the parties which can be inferred from their conduct It may however be a question of law if their conduct necessarily implies surrender

11 The Madras High Court in Gopaldoss Dwarkadoss Family Trust Estate v Michaelswami Pillai ILR (1964) 1 Mad 443 has held that the surrender in order to be valid must be by all the lessees and that a surrender by one of several joint tenants would not avoid the lease The Madras High Court in laying down this law has followed an English decision in Leek and Moorlands Building Society v Clark (1952) 2 All ER 492 (1952) 2 QB 788

12 Mere non payment of rent does not constitute implied surrender (see Mazhar Rai v Ramgat Singh (1896) ILR 18 All 290 at 294 The Calcutta High Court in Rungo Lah Mundul v Abdool Gaffoor (1879) ILR 4 Cal 314 at 318) was also of the same view as it held in that case that mere non payment of rent for many years was not sufficient to show that the relationship under the lease had ceased to exist Patna High Court in Ramayan Prasad v Mt Gulabo Kuer AIR 1967 Pat 35 at 36 held that mere relinquishment of tenancy does not operate as a surrender but if it is accepted by the lessor by taking over possession it amounts to an implied surrender To the same effect is the view expressed in Raja Sri Amar Krishna Narain Singh v Sheikh Nazir Hasan AIR 1939 Oudh 257 at 267 The implication of the judgments of this court in Bundoo v Akbar Ali 1978 All LJ 215 and Smt Madhubala v Smt Budhiya, AIR 1980 All 266 referred to in J J Pancholi s case (AIR 1984 All 130) (supra) is also not different as in both the cases the heirs of deceased tenant appeared to have surrendered the tenancy and thereafter a new contract of tenancy was created in favour of few (not all) of the heirs only In Madhubala s case (supra) the tenant had himself admitted in cross-examination that she and her mother alone were the tenants

13. Let me now proceed to consider the question whether the learned Addl. District Judge was justified in the present circumstances of the case to record a finding that the petitioner had impliedly surrendered his tenancy rights and that the case was covered by the decision of this Court in Sultan v. I Addl. District Judge, Meerut (1982 UPLT NOC 41) (supra).

14. A perusal of the judgment passed by the learned Additional District Judge shows that he was guided by the following factors :—

(i) The rent in respect of the premises in question was paid for about 30 years by Dr. J. P. Mukherji alone and rent receipts were issued in his name.

(ii)(a) Sri J. D. Mukerji (petitioner) has his own house in the city. He had been living in Trans Gomti area at 228 Faizabad Road, Lucknow.

(b) The Senior Inspector (Rent Control) at the time of his inspection had found the premises locked. He was informed that the lock had been placed by Sri S. N. Banerji son in law of the petitioner. This clearly indicated that the petitioner was not then residing in the house. The putting of lock by Sri S. N. Banerji suggests absence of interest of Sri J. D. Mukerji.

(c) Merely because address of 32, Aminuddaula Park, Lucknow has been given as the address of the petitioner in few letters addressed to him and in his bank account and that this very address was given by the sons of the petitioner at the time of their employment does not mean that the tenancy in the name of Dr. J. P. Mukerji also included his tenancy. The letters sent to the petitioner on the address 32, Aminuddaula Park, Lucknow did not constitute evidence of possession and could not have been referred to by the Additional District Magistrate (Civil Supplies).

(iii) The case is covered by the decision of this court in Sultan v. I Addl. District Judge, Meerut (1982 UPLT NOC 41) referred to above.

15-16. In para 26 of his affidavit dt. 17.9.79 filed before the Additional District Magistrate (Civil Supplies) the petitioner gave details of some of the documents which he had filed in the case. They included :—

(1) Government Notification No. 6120/XXXVI (sec) 76-680/74 dt. Oct. 1, 1977 by which the petitioner was appointed as Judge of District Juvenile Court, Lucknow. The address in the said notification was given as 32, Aminuddaula Park, Lucknow.

(2) Letter dt. Sept. 4, 1978 from the Private Secretary to the Prime Minister of India addressed to the petitioner as Judge, District Juvenile Court, 32, Aminuddaula Park, Lucknow.

(3) Order dt. 4.3.77 of the District Supply Officer, Lucknow granting exemption to the petitioner from the Guest Control Order. In this order the address of the petitioner was mentioned as 32, Aminuddaula Park, Lucknow.

(4) Telegram dt. 17.9.76 from Kobe, (Japan) to the petitioner on his address 32, Aminuddaula Park, Lucknow.

(5) Letter dt. 1.4.71 sent to the petitioner on his address 32, Aminuddaula Park, Lucknow from Sri Kamal Nath Tewari, M.P.

(6) Letter No. 2883/G/52-53 dt. 21.11.1974 from Captain Superintendent, Training Ship Rajendra addressed to the petitioner at 32, Aminuddaula Park, Lucknow.

17. It was also stated by the petitioner in that affidavit that he had been living all along with Dr. J. P. Mukerji who also held a joint account with the petitioner (deleted son in the State Bank of India. The petitioner further deposed in that affidavit that he had three fixed deposit accounts, one in the State Bank of India and two in the Central Bank of India and in all the three accounts the petitioner's address is mentioned as 32, Aminuddaula Park, Lucknow. He also stated that he had a ration card in which his address is mentioned as 32, Aminuddaula Park, Lucknow. This ration card was renewed in the year 1975, and in the said ration card Dr. J. P. Mukerji has all along been shown as a family member of the petitioner. His two sons were employed. One was in the Army and the other in the Merchant Navy and both the sons had given their address as 32, Aminuddaula Park, Lucknow. This address was also recorded in their service records. These documents which consistently

contained petitioner's address as 32 Annamaldutta Park Lucknow pertained to the period prior to the death of Dr J P Mukerji when there was no controversy regarding the tenancy rights of the premises in question The authorities the State Government and the banks in the case of the petitioner and the army authorities in the case of petitioner's sons know that the petitioner and his sons would be available at this address

18 The documents referred to above were extremely material documents which could not have been ignored by the learned Additional District Judge by observing that they did not constitute evidence of possession or that the Additional District Magistrate (Civil Supplies) should not have taken those documents into consideration

19 The observation of the learned Additional District Judge that the petitioner had his own house in the city was wholly uncalled for as it was not supported by any evidence on record The petitioner had stated in his affidavit dt 1 9 79 that his daughter lived in house No 228 Faizabad Road Lucknow (See para 9 of the said affidavit) Even the Senior Inspector (Rent Control) in his report, which is the sheet anchor of opposite parties case has stated that House No 228 Faizabad Road Lucknow was owned by Sri S N Banerji It was therefore not the petitioner's house and the learned Additional District Judge was in error in holding otherwise

20 The documents referred to above which were held by the learned Additional District Judge not to constitute the evidence of possession clearly indicate that the petitioner had all along been living in the premises in question and that his sons also lived with him It was therefore not a case where the tenancy was relinquished by surrender of possession in favour of the landlord The petitioner as indicated by the Additional District Magistrate (Civil Supplies) was all along in joint possession and it was not a case where it could be said that the petitioner had not to borrow the words of Brother Mehrotra J in Sultan's case (1982 UPLT NOC 41) (supra) surred in the matter That decision was not applicable to the facts of the case and the learned Additional District Judge was patently in error in relying upon that decision to hold merely on the basis that the rent was paid by Dr J P Mukerji that the petitioner had impliedly surrendered his tenancy

21 So far as the Inspector's report is concerned, it could not have been acted upon blindly by the learned Additional District Judge Inspector's report is obtained under Rule 8 which is quoted below —

8 Ascertainment of vacancy Ss 12 16 and 34(6) (1) The District Magistrate shall before making any order of allotment or release in respect of any building which is alleged to be vacant under S 12 or to be otherwise vacant or to be likely to fall vacant obtain a report from the Rent Control Inspector (2) The Inspector shall inspect the building so far as possible in the presence of the landlord and of the tenant or any other occupant and submit his report after eliciting the facts wherever practicable by at least two respectable persons residing in the locality and the conclusion in the report of the Inspector shall be posted on the notice board of the office of the District Magistrate for the information of the general public and an order of allotment may be passed not before the expiration of three days from the date of such posting and if in the meantime any objection is received not before the disposal of such object on

(3) Any objection under sub-R (2) shall be decided after considering any evidence that the objector or any other person concerned may adduce "

22 The rule provides that before making an order of allotment or release the District Magistrate shall get the building inspected The manner in which the building is to be inspected has been set out in sub-R (2) under which a building is to be inspected so far as possible in the presence of the landlord and the tenant or any other occupant The use of the words so far as possible indicates that an effort has to be made to inspect the building in the presence of the landlord or tenant or any other occupant so that inspection report may not be an ex parte report Sub-r (3) indicates that the correctness of the report can be questioned by the person concerned The report per se is not of any binding value It does not constitute conclusive evidence on the question of vacancy or occupancy The

correctness of the report has to be decided in the light of the objections filed and evidence adduced by the objector or the person concerned. It is obvious that in deciding the question whether the report is correct or not the evidence will have to be discussed and scrutinised before recording a finding on the question of vacancy. The provisions of sub R. (2) of R. 8 are mandatory and any departure from that procedure may vitiate the report.

23. It is obvious that in the instant case the inspection was made in the absence of the petitioner. The premises in question was reported to be locked. The report does not say that the Inspector made any other attempt to inspect the premises in the presence of the petitioner. In any case the Inspector had come to know at the spot that one Sri S. N. Banerji had put a lock on the premises in question. The Inspector had also come to know that Sri Banerji lived at 228 Faizabad Road, Lucknow which was his own house and that he was son in law of the petitioner. The learned Additional District Judge should not therefore have relied upon this report without looking into the objections raised by the petitioner against the said report. It will be worthwhile to mention that the petitioner in his affidavit dt. 17.9.79 filed before the Additional District Magistrate (Civil Supplies) had seriously questioned the correctness of the report. It was stated in para 4 of the affidavit that the Senior Inspector had not contacted the petitioner who was the tenant of the building and was living there in for the last 60 years since the time of his father Babu Hazari Lal Mukerji who was the original tenant. In para 19 of the affidavit it was stated that the report was a table report and had not been prepared in accordance with the provisions of R. 8(2). The petitioner also stated in para 24 of the affidavit that it is under.

24. That in the Senior Inspector's report 3 witnesses have been cited. Sri Ashok Kumar Shukla who chose subsequently to become the allottee applicant himself was a friend of Lalit Mohan and was the son of Smt. Sunder Devi Shukla who was is beguiled to call herself the owner of the premises and to give her consent in favour of Lalit Mohan for the allotment of premises in question allegedly died in the recent liquor tragedy. The other person is Ramesh Kumar Gupta whose photo studio is situated on main busy thoroughfare and has removed from the locality. And Sri B. K. Saxena says that he was given to understand by Ashok and Lalit that the deponent intended to give up the residence after the death of Dr. Mukerji and therefore he told the Inspector that the house had fallen vacant.

24. These objections were not taken into consideration by the Additional District Judge who could not have blindly acted upon the said report.

25. Learned counsel for the Trust has contended on the basis of the Supreme Court decisions in Raman & Raman Ltd. v. State of Madras, AIR 1956 SC 663; Zora Singh v. J. M. Tandon, AIR 1971 SC 1395; Parry and Co. Ltd. v. P. C. Pal, AIR 1970 SC 1333 that there could not be a reappraisal of the evidence in deciding a writ petition and that a writ of certiorari cannot be issued merely on the ground that the appreciation of evidence by the lower court was not proper. A perusal of the above Supreme Court decisions would indicate that the judgments which are based on no evidence or which are perverse are not immune from judicial scrutiny.

26. In the instant case the findings recorded by the learned Additional District Judge that the petitioner had his own house in the city was based on no evidence. He further finding that the documents which were filed by the petitioner before the learned Additional District Magistrate (Civil Supplies) did not constitute evidence of possession or could not have been taken into consideration was an erroneous decision on a question of law. The learned Additional District Judge also committed manifest error of law in blindly relying upon the report of the Rent Control Inspector. In any case the findings recorded by the learned Additional District Judge that the petitioner had impliedly surrendered his tenancy was based on total misappreciation of the true legal position and misapplication of a decision of this Court in Sultan's case (1982 UPLT NOC 411 (supt.)) which was not applicable to the present case. The findings recorded by the learned Additional District Judge hurt the judicial conscience. They cannot therefore be sustained.

27. In view of the above the writ petition

is allowed The judgment and order dt 27 9 82 passed by the Additional District Magistrate (Civil Supplies) Lucknow is upheld and the judgment and order dt 30 6 83 passed by the learned IVth Additional District Judge Lucknow is hereby quashed Let a writ of certiorari issue accordingly The petitioner shall be entitled to his costs

Petition allowed

1986 ALL L J 69

OM PRAKASH J

M/s Moradabad Gujrati Sugar Works Petitioner v State of U P and others Respondents

Civil Misc Writ Petn No 886 of 1982 D/ 1 8 1985

U P Sugar cane (Purchase Tax) Act (9 of 1961) — S 15 U P Sugar cane (Purchase Tax) Rules 1961 — R 13 A — Assessment made for period 22 11 1981 to 20-12 1981 — Unit in fact started working on 20-12 1981 — No intimation sent in accordance with R 13 A — Omission is technical — No tax can be charged for anterior period on such ground

(Para 3)

Cases Referred Chronological Paras

1983 UPTC 359

Sunil Gupta for Petitioner

ORDER — This writ petition is directed against the order passed by respondents 2 and 3 which are Annexures 1 and 5 respectively to the writ petition under the U P Sugar cane (Purchase Tax) Act 1961 (for short the Act 1961)

2 The assessment on the petitioner who is the owner of a unit was made for the period 22 11 1981 to 20-12 1981 But the case of the petitioner is that the unit started working only on 21 12 1981 and therefore the assessment for the period 22 11 1981 to 20-12 1981 is illegal Upon a careful perusal of the order of respondent 3 (Annexure 5 to the Writ petition) it clearly appears that he has recorded a categorical finding that the unit had worked only with effect from 21 12 1981 He has also given a finding that the licence of the petitioner was suspended from 4 12 1981 to 20 12 1981 Having found that the unit actually worked from 21 12 1981 respondent 3 rejected the case of the petitioner because the intimation for changing the specified dates was not in accordance with Rule 13 A U P Sugar cane (Purchase Tax) Rules 1961 (for short the Rules 1961)

3 I have heard rival submissions of the parties The submission for the petitioner is that the sole purpose of giving the intimation a week earlier for changing the date is to enable the authorities to verify either by making pot inspection or otherwise whether the intimation so given was correct and that purpose has been achieved in this case as inspections on three dates i e 21 11 1981 8 12 1981 and 17 12 1981 had been made It is also submitted that the unit would not have operated during the period 4 12 1981 to 20 12 1981 as the licence remained suspended during that period It is correct to say that under R 13 A the procedure has been laid down for giving intimation a week earlier from the specified date when the specified date is sought to be changed which may enable the authorities to verify the correctness of the intimation In this case respondent 3 himself found that the unit started working only from 21 12 1981 It means there is no dispute as to the correctness of the intimations given by the petitioner Moreover the unit has not operated from 4-12 1981 to 20-12 1981 when the licence was under suspension The petitioner to support his submission relied on Mahendra Singh v Assistant Sugar cum Appellate Authority Bijnor 1983 UPTC 359 in which it was held that a technical omission that intimation was not sent to all the proper authorities will not be fatal it could be gathered from the facts of the case that the unit otherwise remained closed for a given period This authority is fully applicable to the facts of the instant case The unit having not admittedly operated upon prior to 21 12 1981 no tax can be charged for the anterior period even on the assumed quantity provided in Schedule I to the Rules 1961

4 The writ petition therefore succeeds and is allowed The orders of respondents 2 and 3 (Annexures 1 and 5) to the writ petition are quashed The tax levied for the period

---

JC/KC/F596/85/BNG/SNV

anterior to 21.12.1984) will not be recovered. No order as to costs in the circumstances of the case.

Petition allowed.

1986 ALL. L. J. 70

(LUCKNOW BENCH)

K. N. GOYAL AND BRIJESH KUMAR, JJ.

Surendra Pratap Singh, Petitioner v. Registrar Co-operative Societies and others, Respondents.

Writ Petn. No. 4402 of 1984, D/- 18.9.1984.

(A) U. P. Co-operative Societies Act (11 of 1966), S. 122(1) — U. P. Co-operative Rules (1968), R. 389(A) — Order terminating services of salesman working in Co-operative society — Writ petition — Society a private body not covered by notification No. 366 D/- 4.3.1972, issued under S. 122 of the Act — Appointment of salesman claimed to be in pursuance of circulars issued by Registrar under S. 121 — Circulars not published in Gazette and so cannot be treated as regulation made under S. 121(1) — Appointment not statutory and not regulated by statutory provisions — Writ petition not maintainable against order of termination — (Constitution of India, Art. 226). (Para 1)

(B) U. P. Co-operative Societies Act (11 of 1966), Ss. 122, 128 — U. P. Co-operative Societies Regulations, 1975 Regn. 86 — Order terminating services of salesman of Co-operative Society — Interference by Registrar for cancelling termination — Registrar could not interfere and cancel termination as there was no statutory provision to that effect. (Para 2)

Hargur Charan, for Petitioner.

K. N. GOYAL, J. — The petitioner was a Salesman of a Sadhan Sahkari Samiti and is aggrieved by the order of termination of his services passed by the Society. The post of Salesman is not centralised and a Sadhan Sahkari Samiti is not one of the Societies which are mentioned in Notification No. 366/C. XII/C. 36/71 dated March 4, 1972 issued under Section 122 of the U. P. Co-operative Societies Act read with Rule 389(A) of the Rules. As such the Co-operative Societies Employees Service Regulations, 1975 are not attracted because of the definition of Co-operative Society contained in Regulation 2(ix) of the said Regulation. Learned counsel for the petitioner however contends that the appointments of salesman were made in pursuance of the Registrar's Circulars dated 3.2.84 and 26.3.84 (annexure 14 and 13 respectively) and those circulars should be deemed to have been issued by the Registrar under Section 121 of the Act. This contention is not tenable in view of the express provisions of sub-section (2) of Section 121 which lays down that the regulations framed under sub-section (1) shall be published in the gazette and take effect from the date of such publication. The circulars relied upon are not shown to have been published in the gazette and cannot therefore be treated as regulations made under Section 121(1). The Registrar may have issued directions in order to ensure that the Government's scheme of public distribution of essential commodities through cooperative societies is run smoothly and no wastage occurs while making indiscriminate recruitments on the post of salesman. This does not however imply that the Registrar by issuance of such circulars meant to make the services of those salesmen statutory or to make statutory regulations for conditions of their service. In this view of the matter, writ petition cannot be maintained in order of the Co-operative Society which is a private body.

2. The petitioner has also challenged the order of the Additional Registrar (exercising the powers of Registrar) dated 19.8.84 on the petitioner's appeal purporting to be made under the aforesaid Regulations of 1975 read with sections 122 and 128 of the Act. By this order the Additional Registrar has declined to pass any stay order on the ground that he has no powers to stay. The appeal of the petitioner purported to be under regulation 86 of the 1975 Regulations referred to above. We have already seen above that those regulations are not applicable to the petitioner's case and as such no appeal lay under Regulation 86. The petitioner however contends that the Registrar had power of interference under Section 128 of the Act. Section 128 empowers the Registrar to annul any resolution of a co-operative society or cancel any order passed by an officer

of the society if such a resolution or order is in contravention of the provisions of the Act Rules or Byelaws of the Society. We have seen above that there is no provision in the Act or Rules nor has any byelaws of the society been shown on the basis of which it could be contended that the Registrar could annul the impugned order. The Registrar has no power of interference in no provision of the Act Rule or Byelaws has been referred. The order of the Additional Registrar is thus not open to challenge.

Accordingly the writ petition is dismissed in limine.

Petition dismissed.

1986 ALL L J 71

B D AGRAWAL J

Anand Singh Waldia Appellant v. The Collector Nainital etc. Another Respondents

First Appeal No 303 of 1969 D/ 22 7 1985 *

(A) Land Acquisition Act (1 of 1894) S 23 — U P Zamindari Abolition and Land Reforms Act (1 of 1951) Ss 19 153(1) 134 — Acquisition of land — Land held Sirdar — It has market value

The land is held by Sirdar it cannot be said that it has no market value. Sirdar is not transferable. It is open to the holder to acquire bhumidhari right by depositing certain amount and then to make transfers inter vivos. (Para 4)

(B) Land Acquisition Act (1 of 1894), S 23 — Acquisition — Valuation — Assessment — Objectors filed exemplars of some registered sale-deed — Authorities rejecting exemplars on ground that they pertain to small area — Authorities also ignoring one sale deed in respect of 15 acres of land — Land covered under exemplars — Similar in material respect to land under acquisition — None of transaction alleged to be collusive — Held Sale-deed pertaining to 15 acres could not be brushed aside lightly and can be taken into account after making suitable discount (Paras 5 6)

(C) Land Acquisition Act (1 of 1894), Ss 18, 54, 23 (2) — Solatium — S 23(2) stood deleted when award was pronounced — S 23(2) stood revived afterwards — Appeal decided thereafter — Solatium could not be denied

An appeal under S 54 being in continuation of proceedings under S 18 the consideration relevant at the stage of deciding the reference holds good also when the matter comes up for decision in appeal. The judgment of the Court in appeal merely represents a stage in the process of quantifying the compensation (Para 7)

(D) Land Acquisition (Amendment) Act (68 of 1984) S 23(2), 30(2) — Solatium — Award both by Special Land Acquisition Officer and District Judge on reference given before date of Bill — Appeal pending when amendment Act came into force — Solatium awarded at 15% (Paras 8, 9)

Cases Referred	Chronological	Paras
1985 All LJ 1029		9
1985 All LJ 1080	1985 UPLBEC 330	9
AIR 1985 SC 382	(1985) 1 SCC 231	7
AIR 1985 SC 576	(1985) 1 SCC 582	8 9
AIR 1984 All 330		7
AIR 1946 Cal 416		4
AIR 1933 Nag 208		4

Ashok Khare for Appellant Standing Counsel for Respondents

JUDGMENT — This is an appeal under S 54 of the Land Acquisition Act directed against an award of the District Judge Nainital dated July 2 1969

2 Land measuring 66 43 acres situate in village Bhoopur Jaspur Tahsil Kashipur was required by the State for the extension of the Tumaria Dam. The notification under S 4(1) of the Land Acquisition Act is dated October 16 1961 this was followed by notification under S 6/17 of the Act dated November 23 1961. Possession was taken on January 5 1962. The Special Land Acquisition Officer gave his award on September 26 1962. Land revenue payable for the land in question was Rs 164 75

*Against judgment and decree of V N Misra Dist Judge Nainital D/ 2 7 1969

per annum. The Land Acquisition Officer brought this down as per hereditary rates to Rs 116 25 per annum and multiplying the same by 20 he assessed the capital value of the land at Rs 2 325/ only. This is the amount awarded to the objector, besides interest at the rate of six per cent per annum from the date of taking over possession until payment. Upon reference under Section 18 the District Judge Nainital on July 2 1969 observed that the land could not be said to have market value when the notification under S 4(1) was made because this was held by the Objector as sirdar and hence it was not transferable. The exemplars filed by the objector were discarded on ground that they related to small pieces of land. The capitalised value was affirmed at Rs 2 325/ only. The solatium claimed by the objector was declined too with the finding that it could not be had since S 23(2) of the Act stood deleted by the relevant time in pursuance of the U P (Amendment) Act 1954.

3. Aggrieved the claimant objector has preferred this appeal. I have heard Sri Ashok Khare for the appellant and the Standing Counsel appearing for the State respondent.

4. Sri Khare urged that the finding recorded by the District Judge in reference under Section 18 to the effect that the land in question had no market value when the acquisition took place cannot be sustained. Admittedly the appellant was sirdar of this land under S 19 of the U P Zamindari Abolition and Land Reforms Act 1950. Interest as sirdar was not transferable in view of S 153(1) of this Act as it then was. It has been overlooked, however, that under S 134 of the Act it was open to the appellant to acquire bhumidhari right by deposit of the amount referred therein and then to make transfer inter vivos. The deeds of sale placed on the record by the appellant as exemplars ranging during the period to July 15 1959 to December 13 1961 show beyond that there were transfers of land by persons acquiring bhumidhari rights under S 134 aforementioned. In view of S 130(b) as it present a person who held land as sirdar under S 19 has been conferred the status of bhumidhar with transferable rights. This has come into being of course with effect from January 28 1977 by virtue of the amendment introduced by the U P (Amendment) Act VIII of 1977. The material fact remains that even before the date the appellant was competent to obtain bhumidhari rights under S 134 of the Act by the land by way of transfer. In Province of Bombay Board of Trustees AIR 1946 Cal 416 cited for the appellant it was observed that the compensation must be fixed no doubt by the loss to the owner but in estimating this loss it is legitimate to disregard the restrictions on owner which were existing at the time of acquisition. To the similar effect are the observations in Mahtab Hussain v Collector of Amritsar AIR 1933 Lah 208. It was not right therefore for the authorities to have taken the view that the land under acquisition did not have market value at the relevant time.

5. It was next contended for the appellant that the exemplars filed by him in the proceedings under S 18 could not have been discarded altogether on the mere ground that they pertained to comparatively small areas. The registered deeds of sale cited upon for the appellant in this connection are as under:

i Sale deed dated 15 7 59 executed by Kallu Singh and others in respect of 1 5 acres in village Amkot Tehsil Kashipur for Rs 900/ at the rate of Rs 500/ per acre approximately.

ii Sale deed dated 28 3 1960 executed by Kallu in respect of 32 acre in village Manoharkhipur Tehsil Kashipur for Rs 300/ at the rate of Rs 900/ per acre.

iii Sale deed dated 20 6 1961 executed by Chandan Singh in respect of 1 22 acres in village Manoharkhipur for Rs 640/ at the rate of Rs 530/ per acre.

iv Sale deed dated 13 12 1961 executed by Chandan Singh in respect of 100 bigha in village Rampur Tehsil Kashipur for Rs 3000/ at the rate of Rs 200/ per acre.

6. There can be no denial that with the exception of the sale deed dated 13 12 1961 the rest are of small area only. The deed of sale dated 13 12 1961 pertains to 15 acres approximately and this may not be brushed aside lightly. For the appellant it was brought on the record that the land covered under these exemplars is in material respect similar to the land acquired. None of these transactions

has been alleged or shown to be collusive in nature. Discount has necessarily to be made on the basis that these transactions pertain to small areas but then that alone cannot suffice to hold that none of these exemplars could be relied upon even after making discount such as is reasonable. Swami Singh examined for the appellant testified that the land covered under the deed of sale dated 13.12.1961 was jungle when he made the purchase and consequently he had to invest large amount to make it worthwhile. This to some extent explains the rate of Rs 2000/- per acre governing this deed of sale. In my opinion due allowance for the area covered under these exemplars being small the market value may fairly be assessed at Rs 2000/- per acre.

7. The next argument of the appellant's learned counsel is in regard to the solatium declined in toto by the District Judge. S 23(2) of the Land Acquisition Act was deleted by the U.P. Act XXII of 1984 with effect from November 19, 1984. This was reintroduced however with effect from July 3, 1972 by the U.P. Act XXVIII of 1972. In Collector Varanasi v Ratan Shanker Prasad AIR 1984 All 330 the Division Bench of which I was a member took the view after consideration made at length that if at the time when the award is formulated by the Collector or in reference under Section 18 there is provision in the statute for the payment of solatium that has to be included despite the fact that the notification under Section 4(1) may have issued at a time when such provision did not exist. True in that case the award under Section 18 was made on December 10, 1974 when Section 23(2) stood revived. In the case before us the District Judge gave the award on July 2, 1969. This however makes no difference on principle. An appeal under Section 54 being in continuation of the proceeding under Section 18, the consideration relevant at the stage of deciding the reference holds good also when the matter comes up for a decision in appeal. The appellant's right to compensation arose on January 5, 1962 when possession was taken and in consequence the land vested in the State. The quantification may be concluded much later. The judgment of this Court in appeal merely represents a stage in the process of quantifying the compensation. I am fortified in this opinion by the recent decision of the Supreme Court in Jogender Singh v State of Punjab (1985) 1 SCC 241 (AIR 1985 SC 362). Solatium could not therefore be disallowed to the appellant on the basis that S 23(2) stood deleted on September 26, 1962 or July 2, 1969 for that matter when the award was pronounced.

8. The question next is as to the rate at which solatium be awarded. S.P. Khare submitted to begin with that this be at the rate of 30 per cent in view of S 23(2) as amended by the Central (Amendment) Act LXVIII of 1984. This is unacceptable. Sect on 23(2) has to be read along with S 30(2) of the Central (Amendment) Act 1984. It is a case where the award both by the Special Land Acquisition Officer and the District Judge on reference was given before April 30, 1982. The appeal has no doubt remained pending even beyond September 24, 1984 when the amending Act came into force. But this is immaterial. It is only if the award of the Collector or the District Judge under Section 18 were of the period between April 30, 1982 (when the Bill was introduced in Parliament) and September 23, 1982 (when the Act came into force) that benefit could be had of the enhanced rate of solatium and interest for that period. This has been clearly laid down by the Supreme Court in (1985) 1 SCC 582 (AIR 1982 SC 576) (K. Kamalajammanniaveru v Special Land Acquisition Officer) observing: The Bill which ultimately became the Amendment Act was introduced into Parliament on April 30, 1982. Parliament obviously desired to give effect to the amended S 23(2) from the date of introduction of the Bill. So the amended provision was expressly made applicable by Section 30(2) to awards made by the Collector or Court between April 30, 1982 and September 24, 1984 also. A natural corollary was that the new provision should apply to orders made by the High Court or by the Supreme Court in appeals against such awards that is awards made between April 30, 1982 and September 24, 1984. Parliament did not intend and could not have intended that whatever be the date of the award, however ancient it may be, solatium would stand enhanced to thirty per centum if an appeal happened by chance or accident to be pending on April 30, 1982. Surely it was not the intention of Parliament to reward those who kept alive the litigation even after several years. If it was the intention of Parliament to make the

intended S 23(2) applicable to all proceedings relating to compensation wherever they be pending, the words "after the 30th day of April 1982 (the date of introduction of the Land Acquisition Amendment Bill 1982 in the House of the People) and before the commencement of this Act" in S 30(2) would become meaningless It is clear that Parliament wanted the amended Section 23(2) to have very limited retrospectivity

9 This has been followed by a Division Bench of this Court in State of U P v Bharat Kumar (First Appeal No 95 of 1979 decided on April 22 1985) (reported in 1985 All LJ 1029) Contrary view was taken by a learned single Judge in Rahmat Ullah v State of U P 1985 UPLBEC 339 (1985 All LJ 1080) decided on February 18 1985 In that case the award by the Land Acquisition Officer was given on December 31 1970 The award of the District Judge also came to be pronounced during 1970 72 Relying upon Section 23(2)/Section 28 as amended by the Central (Amendment) Act LXVIII of 1984 the learned Judge awarded in this case solatium at the rate of thirty per cent instead of fifteen per cent and also interest at the rate of nine per centum instead of six per centum per annum I do not feel called upon to refer this to larger Bench keeping in view the law laid down by the Supreme Court in (1985) 1 SCC 582 (AIR 1985 SC 576) (supra) decided on February 14 1985 which was not brought to the notice of the learned single Judge in Rahmat Ullah (supra) and also as the Division Bench has in the subsequent decision dated April 22 1985 mentioned above followed the Supreme Court view Sri Khare in all fairness did not pursue his contention on this account The solatium to which the appellant is entitled would be at the rate of fifteen per centum as provided under Section 23(2) before the amendment made by the Central Act 1984

10 Having regard to the discussion made in the above the appellant is entitled in my view to compensation is under

1 Land Rs 13 286/ at the rate of Rs 200/ per acre

2 Solatium – Rs 1 992/ at the rate of Rs 15/ per centum

3 Total Rs 15 278/ besides interest at the rate of six per centum per annum from January 5 1962 when the possession was taken till payment

11 The appeal succeeds in part and is allowed accordingly Costs shall be borne by the parties

Appeal partly allowed

1986 ALL L J 74

A N DIKSHITA J

Vasdeo Sar in Agarwal (Jindal) Petitioner v VIth Addl District Judge and another Respondents

Civil Misc Writ No 2544 of 1981 D/ 19 7 1985

Constitution of India, Art 226 — U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972) Ss 21 and 22 — Appellate Court deciding release application under S 21 of U P Act in favour of Landlady — Comparative convenience and hardship of parties adequately considered — Findings recorded by it being findings of fact, High Court cannot re appraise evidence or reconsider material on record and interfere with the findings (Para 10)

Cases Referred Chronological Paras

1980 All LJ 205 1979 All Rent Cas 481 9

Sitaram Sinh for Petitioner R N Singh for Respondents

ORDER — By means of this petition under Art 226 of the Constitution the petitioner has sought the relief of certiorari for quashing the order dated 16 11 1980 passed by the VI Additional District Judge Bareilly respondent No 1

2 Briefly stated the facts are that Smt Narmini Jindlady owner of premises No 561 Siklapur Bareilly who is respondent No 3 to the petition filed an application under S 21 of U P Act XIII of 1972 is amended up to date for the release of the accommodation in occupation of the petitioner in his capacity as tenant on a monthly rent of Rs 40/ It was stated in the release application by respondent No 3 that she being all alone had let out the

lower portion to the petitioner It has also been alleged in the said application that the petitioner assaulted respondent No 3 the landlady on 22 1 1978 and again on 25 5 1978 for which a first information report was lodged Being scared on account of such assaults and threatening postures of the petitioner the respondent No 3 requested her mother in law to live with her and to which request the latter acceded The respondent No 3 needed the accommodation in the occupation of the petitioner for her own use and occupation It was also stated by respondent No 3 in her release application that the petitioner had in his possession a big palatial parental house where he could conveniently shift without any hardship The release application was filed by respondent No 3 as early as 1 6 1978

3 The petitioner contested the application for release filed by respondent No 3 denying the allegations as contained in the said application The accommodation was occupied by the petitioner in the year 1971 and he had improved the same for a comfortable living by investing an approximate sum of Rs 4000/ The petitioner though admitting the existence of a parental house denied that there was any extra accommodation to accommodate him in his brothers were residing therein

4 Necessary affidavits and counter affidavits were filed by the parties in support of their respective contentions

5 The prescribed Authority (Munsif City Bareilly) dismissed the application for release vide order dated 17 11 1979 holding that the landlady respondent No 3 had no genuine need and further that even on comparison the need of the petitioner was greater than that of respondent No 3

6 Aggrieved by the aforesaid order of the prescribed Authority the respondent No 3 preferred an appeal to the court of the District Judge Bareilly which was numbered as Rent Control Appeal No 12 of 1980 The said appeal was transferred to the court of VI Additional District Judge Bareilly for disposal according to law

7 The appellate court after hearing the counsel for the parties at length allowed the appeal and set aside the judgment and order dated 17 11 1979 passed by the Prescribed Authority The appellate court allowed the application under S 21 of U P Act XIII of 1972 filed by respondent No 3 and released the accommodation in occupation of the petitioner in favour of respondent No 3 with a direction that the petitioner shall vacate the disputed portion within three months and deliver possession of the same to the landlady

8 Aggrieved by the order passed by the appellate court the petitioner has preferred the instant petition

9 The appellate court after appraising the evidence and examining the facts on record has come to the conclusion that the need of respondent No 3 is genuine and imminent In the case of Kailash Chand v Addl District Judge 1979 All Rent Cas 481 (1980 All LJ 205) it was held that mental hardship is a relevant consideration for determining the need of the landlord The appellate court has found that respondent No 3 being widow and living done had clearly made out a case and her need to accommodate her mother in law for providing her suitable protection was a bona fide one On the basis of the material before him the appellate court (the VI Additional District Judge Bareilly) came to an irresistible conclusion that it was a case of mental hardship making out a case in favour of respondent No 3 The appellate court also considered the question of hardship likely to be caused to the petitioner and on a comparison came to the conclusion that the petitioner can conveniently shift to his parental house The obdurate resistance of the petitioner to stick to the portion in dispute and not to shift to his own house was also considered by the appellate court and assessing the evidence and facts on record came to the conclusion that the petitioner can shift to his own house where he may raise necessary construction to cater to his need The questions of hardship as well as the need both were considered by the appellate court and the release application of respondent No 3 was then allowed

10 I have perused the order passed by the appellate court and it is clearly borne out that the learned Additional District Judge has very adequately considered the need of respondent No 3 as well as the comparative convenience

and hardship to the parties. Such decision was arrived at by respondent No. 1 on the basis of evidence adduced by the parties and available on record. The findings recorded by the appellate court at findings of fact which while sitting in this extraordinary jurisdiction under Art. 226 of the Constitution this Court does not have the power either to re appraise the evidence or to consider and weigh the material on record. The order passed by respondent No. 1 does not suffer from any manifest error of law inviting interference by this Court.

11. Learned counsel for the petitioner then prayed that some time be granted to the petitioner to vacate the premises in dispute. Though the petitioner does not deserve any sympathy having frustrated the bona fide need of respondent No. 3 for about seven years still in the interest of justice it is expedient that time up to 31st Dec. 1985 may be allowed to the petitioner to vacate the portion in dispute subject to the condition that the petitioner pays the entire amount due from him to be computed till 31.12.1985 to respondent No. 3 within a month from today failing which the petitioner shall be liable to be evicted from the accommodation in dispute forthwith on the expiry of one month.

12. In the result the petition fails and is dismissed with costs. However the petitioner is allowed six months time to vacate the premises in dispute in his occupation subject to the condition that he pays the entire amount due from him to be computed till 31.12.1985 to respondent No. 3 within a month from today. In case of default on the part of the petitioner in making payment of all the dues to respondent No. 3 within one month from today he shall be liable to be evicted forthwith on the expiry of one month according to law.

Petition dismissed.

1986 ALL L J 76

N. N. SHARMA, J.

Smt. Krishna Devi (deceased by LRs) Appellant v. Smt. Krishna Devi (deceased by LRs) Respondent.

Second Appeals Nos. 62 and 63 of 1974. D/ 22.7.1985.

Civil P.C. (5 of 1908), S. 145 — Execution application to enforce liability under decree against surety — Maintainable — Surety is liable to pay decreed amount in case of default by judgment debtor ((i) Contract Act (1872), S. 126, (ii) U.P. (Temporary) Rent Control and Eviction Act (3 of 1947), S. 7-B).

Where K a relative of tenant stood as surety to enable the tenant to file the objection against application under S. 7-B of U.P. (Temporary) Rent Control and Eviction Act 1947 and proceedings under S. 7B were converted into regular suit and was eventually decreed and landlady decree holder filed an execution application to enforce liability under the decree against surety under S. 145 the application was maintainable and surety was liable to pay the decreed amount. (Para 17)

Cases Referred	Chronological Paras
1964 All LJ 175	15
AIR 1954 Pepsu 3	14
AIR 1936 All 593	14
AIR 1936 Cal 143	14

R. K. Kacker and S. K. Kacker for Appellant. V. B. L. Srivastava for Respondent.

JUDGMENT — Both these appeals are being disposed of by this common judgment as these centre round the same legal question about the maintainability of execution application by appellant against respondent surety.

2. The impugned judgments were recorded by Sri O. P. Garg learned Second Civil Judge, Kanpur on 8.9.1973 in Civil Appeals Nos. 245 and 246 of 1972 arising out of Execution Applications Nos. 44 and 49 of 1969 which upheld the orders recorded by IInd Additional Munsif, Kanpur who dismissed the execution applications of decree holder under S. 145 of Code of Civil Procedure as not maintainable. It was found that surety was not responsible to pay the decreed amount.

3. Decree holder appellant filed Misc. Case No. 276 of 1963 under S. 7-B of U.P. Temporary Rent Control and Eviction Act 1947 (Act No. III of 1947) against Smt. Sarla Devi daughter in law of respondent.

4. Smt. Sarla Devi put in appearance in the miscellaneous case preferred by landlady

and wanted to file objection but she was under the necessity to furnish security or to deposit the amount in cash as claimed by landlady under S 7 B(7) of the aforesaid Act

5 Smt Krishna Devi mother in law of tenant stood as surety to enable the tenant to file the objection against the application under S 7 B The proceedings under S 7 B were converted into a regular suit after the tenant had filed the security It was registered as a Regular Suit No 610 of 1965 It was eventually decreed and the first appeal preferred by tenant failed

6 A suit under S 5(4) of U P Act III of 1947 was also filed by tenant for fixation of rent

7 Landlady filed an execution application to enforce the liability under the decree against the surety Smt Krishna Devi under S 145 of Code of Civil Procedure

8 The objection preferred by respondent was that the security was filed only for the purpose of proceeding under S 7 B of the Act and did not render the surety liable to pay the decretal amount of the regular suit Other ancillary objections were also raised which are not necessary to be detailed for the disposal of these appeals

9 It appears that Sri K K Srivastava the then learned IInd Additional Munsif Kanpur held that the decree holder was not entitled to enforce the decree against the surety The decree holder went up in appeal and on 26 9 1970 Sri Santosh Kumar Misra the then IInd Additional Civil Judge Kanpur set aside the order of the executing court and remanded the case for rehearing and disposal according to the observations in the body of his judgment Thereafter the case was disposed of by Sri Shailendra Saxena the then IInd Additional Munsif Kanpur who dismissed the execution application as not maintainable

10 The same view was upheld in appeal

11 I have heard Sri R K Kakkar and Sri S K Kakkar learned Advocates for appellant and perused the record

12 Sri V B L Srivastava learned counsel for the respondent despite all efforts did not appear in the case

13 The only question which falls to be determined in these appeals is whether the surety bond furnished at the stage of application under S 7 B of Act III of 1947 is enforceable against the surety in execution of the decree in which the aforesaid proceedings may eventually culminate

14 The appeals allowed for the following reasons

(i) In Execution Civil Appeal No 9 of 1970 Sri Santosh Kumar Misra learned IInd Additional Civil Judge Kanpur on 26 9 1970 found that the surety was liable In this connection he referred to S 128 of Indian Contract Act and AIR 1954 Pepsu 3 (Vol 41 C N 2) (a) Civil P C (1908) and Amulya R an v Prosad Chandra Kar AIR 1936 Cal 143 So the categorical finding recorded by him was that the application was maintainable and the surety was liable The case was sent back to the court below to be decided in the light of the aforesaid observations in the body of judgment That judgment became final and no appeal etc was preferred against it

When an appellate court remands the case the scope of trial court is to function within the ambit of the remand order The observations made by learned appellate court were transgressed by learned Additional Munsif This is impermissible

(ii) Both the courts below have simply ignored that contractual liability of surety which flowed from the bond furnished by her The surety deed is dated 16 5 1963 and it specifically refers to Misc Case No 276 of 1963 under S 7 B Smt Krishna Devi v Smt Sarla Devi which was pending in the court of Munsif City Kanpur on the date of execution of the bond Smt Krishna Devi surety rendered herself liable under the decree which was to be eventually passed in these proceedings against Smt Sarla Devi The surety and her legal heirs were made liable to pay the decretal amount and interest in case of default by judgment debtor without any objection After such undertaking it is difficult to hold that Smt Krishna Devi would have raised an objection about the maintainability of the execution application to the extent of amount for which she stood surety Learned court below relied upon Tulsi Misir v Bindeshri Misir reported in AIR 1936 All 593 In that case security was given while the judgment

debtor applied for setting aside the ex parte decree This security was offered under S 17(1) Provincial Small Cause Courts Act 1887 The security was given to the satisfaction of the Court up to the period ex parte decree was set aside It could not be attached by the decree holder when the decree was passed in the regular suit to which the surety was not a party Obviously the restoration proceedings on the miscellaneous side are different from the proceedings on regular side It was not a case under S 78 of Act III of 1947

15 Reliance was also placed upon Bal Krishna Gupta v Brijeshwari Prasad reported in 1964 ALJ 175 It was held that the payment in proceedings under S 7 B sub-clause (iv) was not identical with the payment under S 7 B sub-clause (vii) of the said Act In that case the payment was done by the tenant and raised a plea about the title of landlord who was entitled to receive the rent There were rival claimants in that case The disputed point in that case was whether such payments were made by tenant within one month of demand so as to save him from ejectment

16 A look at S 7 B of the Act shows that the said section provides summary procedure for eviction of tenants in default of payment of rent If the amount is paid by tenant within the time allowed in the notice he can save ejectment and the amount deposited has to be paid to the landlord in satisfaction of the arrears vide S 7(4) If the tenant appeared and filed objection then the objection is entertainable only on deposit of cost in court or furnishing security to the satisfaction of court On payment of necessary court fee by the landlord the application is to be treated as a plaint Obviously the decree has to be drawn after hearing the parties and means the formal expression of an adjudication which so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit vide S 2(2) of Civil Procedure Code Prior to the drawing of the decree the earlier proceedings are terminable with an order as contemplated by S 7 B sub clauses (5) and (6) of the Act

17 I have referred to surety bond which does not refer to any order but specifically mentioned the decree which was to be eventually passed in the suit So there was a specific undertaking given by the surety to the court which neither even her heirs liable to pay the decretal amount There is nothing in S 145 of Code of Civil Procedure to cut down the extent of liability of the surety which was co extensive with principal debtor vide Section 128 of Indian Contract Act and the execution applications are in unmistakable against her and her heirs etc is also in the surety bond itself

18 In this view of the matter both the appeals are allowed and the impugned orders are set aside The case is remanded to the executing court to dispose of these applications in accordance with law Costs easy

Appeal allowed

1986 ALJ L J 78

(LUCKNOW BENCH)

U C SRIVASTAV AND
KAMLESHWAR NATH JJ

Mohammad Naseem Petitioner v State of U P and others Respondents

Writ Petn No 862 of 1979 D/ 15 5 1985

(A) U P Prevention of Cow Slaughter Act (1 of 1956), S 3 — U P Municipalities Act (2 of 1916), S 298(2) — Bye Laws framed by Municipal Board of Mohammadi — Bye law No 5 — Scope — Slaughter of cattle — Provisions putting ban — Interpretation of different terms in bye law

Prohibition against slaughter applies under bye law 5 to cow bullock bull heifer calf or any milk yielding or pregnant animal or any other animal which is fit to be used for drawing ploughs or carts The ban imposed by bye law 5 on the slaughter of bullocks and bulls must be confined to such of them as are not capable of being used for drawing ploughs or carts or for breeding respectively The expression any milk yielding animal in bye law 5 must be interpreted in its normal sense namely cattle which yield milk for human consumption for example the buffalo she goat Similarly the expression any pregnant animal in the bye law must be confined to the cattle of ordinary use by human beings it cannot be extended to

every animal of every variety. The expression animals capable of being used for drawing ploughs or carts must be interpreted to signify such animals as are normally used for the purpose of drawing carts or ploughs by human beings having regard to the normal pursuits of the local people. It cannot be extended to every animal of every variety. It will also be noticed that the bar contained in bye law 5 does not apply to he goats sheep pigs stags rams is none of them would belong to the category of a milk yielding, draught or breeding cattle. (Paras 3, 4, 5, 6)

(B) U P Prevention of Cow Slaughter Act (1 of 1956), S 3 — U P Municipalities Act (2 of 1916), S 298(2), Bye laws framed by Municipal Board of Mohammadi — Bye-law No 9(4) — Validity — Power of inspecting authorities for according permission for slaughter of weak animal — Clause (4) is vague and does leave unfettered discretion — Clause (4) is liable to be quashed (Paras 5, 8, 9)

(C) U P Prevention of Cow Slaughter Act (1 of 1956) S 3 — U P Municipalities Act (2 of 1916), S 298 2) — Bye-Laws framed by Municipal Board of Mohammadi, Bye law No 9 — Prohibition on slaughter of animal which has become unfit of any service on account of any accident — Such animal may be slaughtered, if there is no other reason on account of which it ought not to be slaughtered — Condition is sustainable (Para 9)

Cases Referred	Chronological	Paras
AIR 1976 All 326		4
AIR 1961 SC 448	1961 (1) Cri LJ 573	8
AIR 1958 SC 731		3, 4

Mohd Husain and Mohd Arif Khan for Petitioner R K Srivastav and Pradeep Kant for Respondents

KAMLESHWAR NATH, J — This writ petition under Article 226 of the Constitution of India seeks to strike down certain bye laws framed by opposite party No 2 Municipal Board Mohammadi district Kheri and for a mandamus to the opposite parties to allow slaughter of animals in accordance with the provisions of U P Prevention of Cow Slaughter Act 1955

2 The petitioner carries on the profession of butchery in town Mohammadi within the limits of the Municipal Board of Mohammadi The Municipal Board framed bye laws contained in Annexure 1 to the writ petition under Section 298(2) of the U P Municipalities Act with the approval of opposite party No 3 the Commissioner of Lucknow Division the bye laws were published in U P Gazette Notification No 2069/21 M 47/75 70 (2) dated 19 3 1977 At the time of the hearing of this writ petition the learned counsel for the petitioner confined his attack to bye laws No 5 and 9 which run as follows —

५ कोई व्यक्ति नगर पालिका मोहम्मदी की सीमा के भीतर अपने व्यक्तिगत उपयोग वितरण अथवा विक्रय के लिये अथवा किसी भी अन्य आवश्यकता के लिये गाय, बैल, साड़ बछड़ा बछिया या किसी दूध देते हुये अथवा किसी ऐसे पशु का वध, जो गर्भ की अवस्था में हो या हल जोतने या गाड़ी चलाने में आ सकता हो, नहीं कर सकता है।

९ पूर्वोक्त निरूपण समय एवं स्थान पर निरीक्षण करने वाले अधिकारी की आवश्यक होगा कि वह अपने सामने उपस्थित किये गये पशु का निरीक्षण करे और इस बात का समाधान कर ले कि वह पशु

१ उप नियम ५ के अनुसार वर्जित नहीं है।

२ मनुष्य के भोजन के लिये उपयुक्त है।

३ रोगी अथवा गर्भ की अवस्था में नहीं है।

४ बहुत दुर्बल अथवा बूढ़ा नहीं है।

कोई भी पशु जो किसी दुर्घटना के कारण कार्य करने में असमर्थ हो गया है केवल इसी आधार पर अनुपयुक्त नहीं ठहराया जावेगा

3 It will be seen that Prohibition against slaughter applies under bye law 5 to cow bullock bull heifer (बछड़ा), calf or any milk yielding or pregnant animal or any other animal which is fit to be used for drawing ploughs or carts The learned counsel does not dispute the validity of the prohibition so far as it relates to cows here heifer and calf Indeed it was settled by the Supreme Court as far back as in the case of Mohd Hanif Quareshi v State of Bihar AIR 1958 SC 731 that the U P Prevention of Cow Slaughter Act 1955 in so far as it prohibits the slaughter of cows of all ages and calves of cows and calves of buffaloes (male and female) is valid The decision also lays down that a prohibition of slaughter of she buffaloes breeding bulls and working bullocks (cattle as well as buffaloes) as long as they are milch and draught cattle is valid

4 The contention of the learned counsel for the petitioner is that the total ban on slaughter of bullock and bulls is not reasonable as it would offend the petitioner's Fundamental Rights under Art 19(1)(g) of the Constitution

and would not serve any public use est after they have ceased to be capable of working as draught animals or of breeding This contention is also supported by the abovementioned decision in the case of Mond Hanif Quraishi AIR 1958 SC 731 supra followed by this Court in the case of Babu v Municipal Board Khera AIR 1976 All 336 Useful ness and age of the cattle sought to be slaughtered would be reasonable criteria for classification of the cattle the ban imposed by bye law 9 on the slaughter of bullocks and bulls must be confined therefore to such of them as are not capable of being used for drawing plough or carts or for breeding respectively

5 The expression any milk yielding animal in bye law 9 must be interpreted in its normal sense namely cattle which yield milk for human consumption for example she buffalo she-goat Similarly the expression any pregnant animal in the bye law must be confined to the cattle or ordinary use by human beings it cannot be extended to every animal of every variety Likewise the expression animals capable of being used for drawing ploughs or carts must be interpreted to signify such animals as are normally used for the purpose of drawing carts or ploughs by human beings having regard to the normal pursuits of the local people it cannot be extended to every animal of every variety

6 It will also be noticed that the ban contained in bye-laws does not apply to he goats sheep pigs stags rams as none of them would belong to the category of a milk yielding draught or breeding cattle

7 These are all the points which relate to bye law No 5

8 Regarding bye-law 9 the contention of the learned counsel for the petitioner is that they have conferred unfettered discretion upon the inspecting authorities for according permission for slaughter of a particular animal We are of the opinion that conditions 1 to 3 set forth in bye law 9 are specific and do not constitute an unfettered or unguided exercise of discretion However we find that condition No 4 is too vague and does leave an unfettered discretion The expression very weak is not capable of a definite connotation If this weakness is a result of disease it could be taken care of under condition No 3 If weakness does not flow from any disease which could render the flesh to be unhygienic for human consumption slaughter should not be prohibited for that reason alone Similarly the expression old age is too vague It will appear from the decision in the case of Abdul Hakim Quraishi v State of Bihar AIR 1961 SC 448 that bullocks bulls and buffaloes are no longer useful for breeding draught and other purpose after 15 years of age It would be unreasonable therefore to leave it at the discretion of the inspecting authority to determine as to what should be the appropriate age for the slaughter of any of these cattle Perhaps the age factor has not to be considered in isolation it must be linked with the usefulness of the animal The element of age by itself bears an angle of compassion and it is one of the fundamental duties of every citizen of India under Art 51A clause (g) of the Constitution to have compassion for living creatures It is ultimately for the Municipal Board to consider the factor of age coupled with the other factors including usefulness in respect of animals sought to be slaughtered to determine whether the animal ought to be slaughtered or not All that can be said presently is that condition No 4 as it stands is quite vague and leaves unfettered discretion to the inspecting authority and therefore deserves to be struck down

9 The last paragraph of bye law 9 says that any animal which has become unfit for any service on account of any accident shall not be declared to be unsuitable for slaughter merely for that reason In other words an animal which has become unfit for any service on account of an accident may be slaughtered if there is no other reason on account of which it ought not to be slaughtered This condition is quite reasonable and deserves to be sustained

10 These are all the points urged before us in this writ petition The writ petition is allowed in part We quash clause (4) of By law No 9 and subject to the interpretation and the scope of the impugned bye laws as set forth above we dispose of the writ petition accordingly All the other relief claimed are refused Parties shall bear their costs

Petition partly allowed

1986 ALL L J 81

O P MEHROTRA J

P C Bajpai Applicant v R hmanulhaq and another Opposite Parties

Criminal Revn No 1261 of 1981 D/ 21 8 1985 *

Criminal P C (2 of 1974), S 197 — Sanction to prosecute — Accused, a Sales Tax Officer, while conducting survey alleged to have abused and threatened labourers of brickkiln and abused owners thereof — Offence committed is during discharge of official duty — Sanction of State Government is necessary

Where in a complaint a Sales Tax Officer was alleged to have abused and threatened the labourers present at the time of his visit and also abused the owners of the brickkiln while conducting survey doing his official duty the offence committed by the Officer by abusing would be due in the course of discharge of official duty and sanction of the State Govt would be necessary It is correct that abusing or threatening was no part of the official duty of a government servant This alone was however not sufficient for holding that the sanction to prosecute under S 197 was not required The question was as to whether the accused at the time when the offence is alleged to have been committed by him was acting or purporting to act in the discharge of his official duty As a matter of fact committing of an offence is no part of the duty of a public servant yet the language of S 197 presupposes that the public servant can still commit offence while acting or purporting to act in the discharge of his official duty The object of S 197 is to guard against vexatious proceedings against public servants and to see that no proceeding is started against them unless there are good reasons to suppose that there is some foundation for the charges If a public servant commits a common offence he has no peculiar privilege but if one of his official acts is alleged to be committed while he is acting in the discharge of his official duty the State will not allow him to be prosecuted without its sanction 1978 Cri LJ NOC 150 Allahabad and AIR 1939 Mad 604 Rel on (Para 7)

Cases Referred Chronological Paras

1978 Cri LJ NOC 150 1978 All Cri C 192 5
AIR 1939 Mad 604 40 Cri LJ 853 5

Keshav Sahai for Applicant Standing Counsel for Opposite Parties

ORDER — The only point involved in this criminal revision is as to whether revisionist P C Bajpai who is a Sales Tax Officer could be prosecuted in this case under S 500/504 I P C without Government s sanction under S 197 Cr P C

2 There is no dispute that the applicant is a Sales Tax Officer and that on 4 4 1980 he visited the brickkiln of which Rahmanulhaq opposite party No 1 is a partner and conducted the survey None of the partners was present at the brickkiln at that time and only some servants and labourers were present On 7 4 1984 Rahmanulhaq filed a complaint against the said Sales tax Officer alleging that on arrival at the brickkiln the accused Sales Tax Officer enquired about the owners and when the servants told him that they were not present the accused started abusing and when the servants asked him not to abuse he called abuses for the owners as well and further threatened that he would see them and will ruin them in the Sales tax case It was further alleged that in this way the accused misused his power and committed offence under Ss 500 and 504 I P C

3 After recording evidence under Ss 200 and 202 Cr P C the Magistrate summoned the accused under S 500 I P C The accused moved an application seeking protection under S 197 Cr P C alleging that he could not be prosecuted without proper sanction of the State Government under S 197 Cr P C This plea found favour with the learned Chief Judicial Magistrate who held that sanction was required before launching prosecution of the accused and hence dropped the proceedings The complainant went up in revision before the Sessions Judge who took a contrary view and held that the act of abusing and giving threat was no part of the official

*Against judgment of G S Sharma 3rd Addl Sessions Judge Moradabad D/ 4 8 1981

duty of the accused and hence sanction under S. 197 Cr. P.C. was not required. Accordingly he set aside the order of the Chief Judicial Magistrate and directed him to proceed with the trial. Being aggrieved the accused has filed the present revision.

4. Despite sufficient service of notice on opposite party No. 1 Rahmanulhaq who was complainant of this case he has not come forward to contest this revision. I have however heard learned Counsel for the revisionist and the Assistant Government Advocate appearing for the State.

5. I may mention at the outset that the view taken by the learned Sessions Judge was clearly erroneous and that the allegations made by the complainant clearly show that the offences alleged to have been committed by the accused Sales Tax Officer were committed while he was acting or purporting to act in the discharge of his official duty. It is not disputed that the accused had gone to the brickkiln of the complainant for conducting survey and that survey was done by him. The complainant does not disclose the circumstance under which the Sales Tax Officer started abusing the servants and labourers when they told him that the owners were not present. On the face of it the allegations contained in the complaint appear to be wrong. It may be that while talking to the servants and labourers the accused might have behaved rudely. all the same he was conducting the survey and talking to the servants and labourers in his official capacity as a Sales Tax Officer and as such he was acting or purporting to act in the discharge of his official duty. The learned Sessions Judge has observed that abusing or threatening was not a part of the official duty of the accused and hence sanction of the Government under S. 197 Cr. P.C. was not necessary. Assuming that the applicant did what he is being accused of having done it will not make any difference in so far as the bar of S. 197 Cr. P.C. is concerned. The language of this section clearly is that no court can take cognizance of an offence alleged to have been committed by a public servant if that offence is committed by him while acting or purporting to act in the discharge of his official duty. It does not matter if the acts were strictly necessary for the discharge of the duty. What has to be found out is whether the act and the official duty were so inter related that one could postulate reasonably that it was done by the accused in the performance of the official duty. though possibly in excess of the needs and requirements of the situation. In this view I am fully supported by a decision of this court in the case of Sri Kailash Sethi v. State, 1978 All. Cri. C. 192 (1978 Cri. LJ NOC 150) and also by the decision of the Madras High Court in the case of M. Subbiah v. T. Ramacharlu AIR 1939 Mad. 604. The facts of these cases were similar to those of the present case. In the first case the complaint was that an Assistant Collector Customs was alleged to have threatened and intimidated the complainant had illegally detained him at the check post for several hours and extorted his statements by putting him in fear of his life. Evidently these acts could not be said to be part of his official duty yet it was evident that they had been committed while he was acting in the discharge of his official duty. In the second case the accused was President of a Panchayat Court and the complainant objected to the dictation of judgment by the clerk of the court whereupon it was said that the accused abused the complainant and slapped him on the cheek and on his protest he unloosed his shoe and threatened to beat the complainant with the same. It was held that the accused was acting in his official capacity and could not be prosecuted without sanction of the local government. The law laid down in the above cases fully supports the applicant's contention.

6. In this connection it may also be pointed out that in the complaint itself it had been mentioned that by acting in this manner the accused misused his powers. This further confirms that according to the complainant himself the accused was acting in the discharge of his official duty as a Sales Tax Officer although he might have exceeded and misused his powers.

7. As already mentioned no one has appeared to contest this revision on behalf of the respondent No. 1 Rahmanulhaq complainant. The learned State Government counsel also could not show any law in which on the facts similar to the case at hand a

court any view might have been taken The view taken by the learned Sessions Judge was clearly erroneous It is correct that abusing or threatening was no part of the official duty of a government servant This alone was however not sufficient for holding that the prosecution s sanction under S 197 Cr PC was not required The question was as to whether the accused at the time when the offence is alleged to have been committed by him was acting or purporting to act in the discharge of his official duty As a matter of fact committing of an offence is no part of the duty of a public servant yet the language of S 197 Cr P C presupposes that the public servant can still commit offence while acting or purporting to act in the discharge of his official duty The object of S 197 is to guard against vexatious proceedings against public servants and to see that no proceeding is started against them unless there are good reasons to suppose that there is some foundation for the charges If a public servant commits a common offence he has no peculiar privilege but if one of his official acts is alleged to be committed while he is acting in the discharge of his official duty the State will not allow him to be prosecuted without its sanction In the present case even on the own allegations of the complainant the applicant was acting in the discharge of his official duty when he is said to have committed the alleged offence although he might have exceeded or misused his powers as such public servant Hence the applicant could not be prosecuted without proper sanction of the State Government under S 197 Cr P C This revision should therefore succeed

8 In the result the revision is allowed The order dated 4-8 81 passed by the learned Sessions Judge is set aside and proceedings in Complaint Case No 526 of 1980 Rahmatulhaq v P C Bajpai under Sections 500/504 I P C are hereby quashed for want of valid sanction under section 197 Cr P C

Revision allowed

1986 ALL L J 83

O P SAXENA J

Manna Singh Appellant v Durga Singh Respondent

Second Appeal No 702 of 1985 D/ 26 7 1985

U P Public Premises (Eviction of Unauthorised Occupants) Act (22 of 1972), S 2(g) — "Unauthorised occupantion" — What does not amount to — A allotted quarters — B close relative of A occupying quarters since prior to allotment, abiding by allotment order and permitting A to occupy it — B s occupation thereafter is nothing but permissive on behalf of A — Therefore, B could not contend that he continued as Unauthorised occupant of the quarter as no action was taken against him under the Act and A was not entitled to file suit for eviction of B

(Para 2)

P S Tripathi for Appellant

JUDGMENT — Heard the learned Counsel for the appellant and perused the judgment of the Court below

2 The undisputed facts are that the plaintiff is an allottee of premises No 22/4 Labour Colony Vishnupuri Kanpur The defendant is a close relation of the plaintiff He was living in the quarter as an unauthorised occupant since prior to the allotment in favour of the plaintiff When the quarter was allotted to the plaintiff the defendant abided by the allotment order and permitted the plaintiff to occupy the quarter The lower appellate Court has rightly rejected the contention of the defendant that he continued to be an unauthorised occupant of the quarter as no action was taken against him under the U P Public Premises (Eviction of Unauthorised Occupants) Act, 1972 When the defendant abided by the allotment order and permitted the plaintiff to occupy the quarter his occupation thereafter could not be anything but permissive on behalf of the plaintiff The plaintiff gave a notice calling upon him to vacate the quarter but he did not do so The plaintiff was within his right to file a suit for eviction and the lower appellate Court has rightly decreed the suit The defendant is

however an old man and in view of the close relationship between the parties I deem it proper to give some time to the defendant to vacate the quarter

3 The second appeal is dismissed summarily with the modification that the defendant appellant is given four months time to vacate the premises There will be no order as to costs

Appeal dismissed

1986 ALL L J 84

= AIR 1986 Supreme Court 302

(From 1979 All Rent Cas 397)

R S PATHAK AND
RANGANATH MISRA JJ

Civil Appeal No 2866 of 1979 D/ 10 10 1985

Harbans Lal Appellant v Jagmohan Saran Respondent

(A) Constitution of India, Art 226 — Certiorari — Writ in the nature of — Issue of — When open — Proceedings for eviction of tenant — Concurrent finding of fact that person (alleged to be sub-lessee) was sitting in shop on behalf of tenant — High Court, in disturbing this finding, exceeds its jurisdiction 1979 All Rent Cases 397, Reversed (U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), Ss 12, 16)

A writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate Court suffers from the error of jurisdiction or from a b each of the principles of natural justice or is vitiated by a manifest or apparent error of law There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior Court or subordinate Court When a High Court proceeds to do so it acts plainly in excess of its powers

(Para 5)

Where in proceedings under S 12 read with S 16 of U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 for eviction of tenant on ground of subletting the prescribed authority and the Additional District Judge concurrently found that the person (alleged to be sub-lessee) was sitting in the shop on behalf of the tenant and deputising for him in carrying on the vegetable selling business the finding by both authorities being one of fact the High Court was not justified in disturbing that finding of fact in writ jurisdiction 1979 All Rent Cases 397 Reversed (Para 5)

(B) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 12(1)(b) — Deemed vacancy — Eviction of tenant on ground of subletting — Person (alleged to be sub lessee) sitting in shop premises and carrying on business on behalf of and for the tenant (original occupant) — Occupation of premises by such a person was occupation by tenant — Held, the accommodation could not be deemed to be vacant within the meaning of S 12(1)(b) (1980) 6 All LR 165 (FB) Dist 1979 All Rent Cases 397, Reversed (Paras 6, 7)

Cases Referred Chronological Paras

(1980) 6 All LR 165 (1980) All WC 385 (FB) 6

R S PATHAK, J — This appeal by special leave is directed against the judgment of the Allahabad High Court allowing the respondent's writ petition on the finding that the accommodation let out to the appellant must be deemed to be vacant

2 The respondent is the landlord and the appellant is the tenant of a shop in Mohalla Nai Panjan Khurja in the district of Bulandshahr The respondent filed a petition under S 12 read with S 16 of the U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 alleging that the accommodation had been sublet by the appellant to one Yadram that the appellant had ceased to occupy the shop and had allowed it to be occupied by Yadram and his son Madan Lal neither of whom was a member of the appellant's family He claimed a declaration that the shop had fallen vacant and that it should be released to him

3 The Prescribed Authority made an order dated Oct 30 1976 rejecting the respondent's petition on the finding that he had failed to prove that the appellant had sublet the shop and that it could be deemed to be

vacant He found that the appellant had established that he was conducting his business of selling vegetables in the shop and that Madan Lal sat in on his behalf An appeal by the respondent was dismissed by the learned Second Additional District Judge Bulandshahr by his order dated Sept 21 1977 He affirmed the findings of the Prescribed Authority

4 The respondent filed a writ petition in the Allahabad High Court and on Aug 1 1979 a learned single Judge of the High Court held that the appellant had been unable to establish any legal relationship of agency between himself and Madan Lal or Yadram and therefore it must be taken that it was Madan Lal who was occupying the shop within the meaning of S 12(1)(b) of the aforesaid U P Act The High Court also declined to accept the appellant s case that the appellant was carrying on the business of selling vegetables when he was already carrying on a brickkiln business and had a cold storage Holding that the property must be deemed to be vacant it remanded the case to the Prescribed Authority for passing orders on the respondent s application for release of the property from allotment

5 We are satisfied that the High Court travelled outside its jurisdiction in embarking upon a reappraisal of the evidence The Prescribed Authority as well as the learned Second Additional District Judge concurrently found that Madan Lal was sitting in the shop on behalf of the appellant and deputising for him in carrying on the vegetable selling business The findings by both authorities rested on evidence and there was no warrant for disturbing that finding of fact in a writ petition The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled The writ petition before the High Court prayed for a writ in the nature of certiorari and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate Court suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior Court or subordinate Court When High Court proceeds to do so it acts plainly in excess of its powers We are informed that a report of the Commissioner in another suit was not considered by the Prescribed Authority and by the learned Second Additional District Judge and therefore it is urged the High Court was justified in taking that report into consideration and entering into an examination of the material on the record We have examined the report of the Commissioner and we find that an objection had been filed to that report and the trial Court had failed to dispose it of In other words the report of the Commissioner is not a final document and cannot be taken into consideration as it stands It must therefore be ignored That being so the finding of fact rendered by the Prescribed Authority and affirmed by the learned Second Additional District Judge remains undisturbed The finding is that Madan Lal sat in the shop conducting the vegetable selling business on behalf of the appellant

6 The next point to consider is whether the shop can be deemed to be vacant within the meaning of S 12(1)(b) of the U P Act Section 12 provides —

12 Deemed vacancy of building in certain cases — (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if —

(a) he has substantially removed his effects therefrom or

(b) he has allowed it to be occupied by any person who is not a member of his family or

(c) in the case of a residential building he as well as members of his family have taken up residence not being temporary residence elsewhere

x x x x x x x x x x x

The deemed vacancy of a building is relevant for the regulation of letting such a building A building which falls vacant is available for allotment under S 16 of the Act to a tenant Under S 12(1)(b) with which we are concerned here a tenant of a building is deemed to have ceased to occupy the building if he has allowed it to be occupied by any person who is not a member of his family The occupation of a person envisaged here cannot possibly include the occupation by any person

as the agent of the tenant. If the contrary construction is accepted and it is held that a person who is a mere agent or servant of the original occupant falls within the contemplation of S. 12(18)(b) it would be impossible for the original occupant to engage any person to assist him in the discharge of his responsibilities in the place where he does so. It cannot be conceived that the U. P. Legislature intended a person occupying a building as a tenant to live or operate in such a building with members of his family and no one else. In the present case Madan Lal sat in the shop conducting the vegetable business on behalf of the appellant. When he did so it must be considered as an occupation by the appellant. Our attention has been drawn to Smt. Keshar Bai v. District Judge Mathura 1980(16) All LR 165 where a Full Bench of the Allahabad High Court held that deemed vacancy would arise within the meaning of S. 12(1)(b) where a person other than a family member was found in the occupation of a building. It does not appear that the learned Judges specifically considered the full significance and scope of the expression "occupied" in S. 12(18)(b). We are of opinion that when a person sits in the premises and carries on a business on behalf of and for the original occupant it cannot be said that the original occupant has thereby allowed the accommodation to be occupied within the meaning of S. 12(18)(b).

7. In our judgment the High Court is wrong in holding that the case attracts the provisions of S. 12(18)(b) of the U. P. Act.

8. Upon the aforesaid considerations we set aside the judgment and order of the High Court and restore that of the Prescribed Authority and the learned Second Additional District Judge. The appeal is allowed with costs.

Appeal allowed

1986 ALL. L. J. 86

B. D. AGRAWAL, J.

Smt. Bina Rani, Appellant v. Fakir Chand and others, Respondents.

F. A. F. O. No. 528 of 1970. D/- 15-7-1985.

Court fees Act (7 of 1870), S. 7(iv) A) (as applicable to U. P.) — Instrument securing other property — Will is instrument which secures property in favour of beneficiary concerned.

A will is an instrument which secures property in favour of the beneficiary concerned. AIR 1971 SC 87 Ref. to and AIR 1968 All 216 (FB) Foll. (Para 5)

Where in a suit for declaration that plaintiff as owner of the suit land alleged to have been bequeathed to her by a will. A subsequent will was averred to have been executed in favour of defendant, and no specific relief was claimed in the plaint in respect of that subsequent will and there was only an averment that in face of will alleged to have been executed in her favour the subsequent will was void, a declaration as to the invalidity of that subsequent will or cancellation thereof on ground that it was void had to be regarded as implicit for the relief for declaration claimed because the relief claimed was for declaration of title and unless the subsequent will got out of the way of plaintiff she could not get declared the title which she sought and therefore in such a case S. 7(iv) A) is attracted. (Para 9)

Cases Referred	Chronological Parts
AIR 1971 SC 87	6
AIR 1968 All 216 (FB)	6, 7
AIR 1958 All 168	7

A. K. Banerji and Santosh Kumar, for Appellant. P. K. Jain, for Respondents.

JUDGMENT — This appeal is directed against an order of the Additional Civil Judge, Ghaziabad dated 6th August 1977.

2. According to the plaintiff's case one Chhuttan Lal was her grandfather. He executed

---

*Against Order of Phool Singh, Addl. Civil Judge, Ghaziabad, D/- 6-8-1977.

a registered will in her favour on 27th July 1974. The respondent No. 1 is the adopted son of Chhuttan Lal aforementioned. Respondent No. 2 is the grandson and respondents Nos. 3 and 4 are alleged to be the tenants of the property in dispute. On 5th July 1975 it is alleged Chhuttan Lal aforementioned executed another will in favour of appellant and respondents Nos. 5 to 8. Chhuttan Lal died in the month of October 1975. The suit was brought for declaration that the plaintiff is the owner landlord vis a vis the respondents Nos. 3 and 4. In paragraph 6-A the averment made is that in face of the will which Chhuttan Lal executed in plaintiff's favour the subsequent will asserted on the respondents side dated 5th July 1975 is void and ineffective. In defence it was pleaded inter alia that the Court fee paid is inadequate. The Court below framed preliminary issue on the point and rejected the finding that the Court fee is deficient and that it should have been assessed and paid in conformity with S. 7(iv A) of the Court fee Act.

3. Aggrieved the plaintiff has preferred this appeal.

4. Section 7(iv A) of the Court fees Act reads as under :—

(iv A) In suit for cancellation of a decree for money or other property having a money value or other document securing money or other property having such value according to the value of the subject matter of the suit and such value shall be deemed to be

5. Learned counsel for the appellant contends referring to this section that it cannot be said to be attracted for the reason in the first place that there is no relief claimed in respect of the subsequent will dated 5th July 1975 and secondly because the instrument in question is not for the recovery of any property. The interpretation which he seeks to put upon the words an instrument securing other property appearing in this section is that the instrument be one which is for recovery of property other than money. In support thereof the argument advanced is that the earlier part pertaining to a decree for money or other property has been interpreted as meaning a decree for recovery of money or for recovery of some other property. On this analogy the submission made is that to attract S. 7(iv A) the instrument has to be one for recovery of some property. I am unable to agree with this interpretation placed for the appellant.

6. In State of U. P. v. Ram Krishna Barman AIR 1971 SC 87 which he learned counsel cites there was interpretation involved of the expression decree for money or other property. It was held that this means only a decree for recovery of money or other property and that it does not include a decree concerning title to money or other property. Unless we were to import the words for recovery into the subsequent part it cannot be claimed that the same interpretation be extended thereto. Secondly in the subsequent clause the expression used is securing. No such expression appears so far as the first part is concerned. The question arising therefore is how to interpret the expression securing in the context and in relation to property other than money. This expression came up for consideration before a Full Bench of this Court. The decision is reported in Smt. Bibbi v. Shugan Chand AIR 1968 All 216.

7. In Smt. Bibbi (supra) the question involved was with respect to a deed of sale. It was held that since the deed of sale ensures the property to the vendee or that in other words "creates title in favour of the vendee in respect of the property involved it is to be considered as securing property in his favour. This applies equally in my opinion where the instrument involved is a will and not a deed of sale. Where as a deed of sale is inter vivos and may operate from the date when it is executed the will comes into operation subsequent to the death of testator. Nonetheless the will as the deed of sale may create title in respect of the property involved therein. It is an instrument which assures or ensures the property in favour. The ratio which appealed to the Full Bench in Smt. Bibbi (AIR 1968 All 216) (supra) is stated as under :—

The only sense in which an instrument may be regarded as securing immovable property is that it makes the title thereto or its possession and enjoyment safe or certain. Even according to the learned Judge who decided the case of AIR 1956 All 168 an instrument securing money obviously means a document intended to assure payment of money and the expression an instrument securing other

property should have unless the context does not permit it a similar meaning. He however did not regard a sale deed as an instrument securing property because it conveys property and transfers the title of the property to the transferee. I may with great respect to the learned Judge say that what has been regarded by him as taking away from a sale deed the character of an instrument securing property seems to me as imparting to it that character in the highest degree. A sale deed assures in the most effective manner the divesting of the title of the transferor in a property and the vesting of that title in the transferee and where the sale of a property can take place only by means of a deed it is the sale deed alone that assures the extinction of the transferor's interest and the acquisition of that interest by the transferee. In my opinion therefore a sale deed is an instrument securing property within the meaning of S. 2(v) A) of the Court fees Act.

8. Applying this same ratio in relation to a will it may not be doubted that this too is an instrument which secures property in favour of the beneficiary concerned.

9. It is true that the plaintiff appellant has not claimed specific relief in respect of this subsequent will in the plaint drafted on her behalf. But then the relief claimed is for declaration of title vis a vis the tenants respondents and unless the will subsequently made or alleged to have been made gets out of the way of the plaintiff appellant he may not get declared the title which she seeks. A declaration as to the invalidity of that subsequent will or cancellation thereof on ground that it is void is therefore to be regarded as implicit for the relief for declaration claimed.

10. For the reasons given above the appeal fails and is dismissed. Costs on parties.

Appeal dismissed.

1986 ALL. L. J. 88

H. N. SETH AND A. N. VARMA, JJ.

Committee of Management of Krishan Uchchatar Madhyamik Vidyalaya and another, Petitioners v. Deputy Director of Education Meerut and others, Respondents.

Civil Misc. Writ No. 5632 of 1984. D/- 10.9.1985.

(A) U. P. Intermediate Education Act (2 of 1921), Ss. 16 A, 16-CC and 16-D — New scheme of Administration for an institution — Provision therein stipulating that Committee would cease to exist on expiry of certain term and authorising Deputy Director to appoint Administrator on non election of new Committee within prescribed period for holding elections for constituting new committee — Valid.

Where the Deputy Director of Education appointed Assit. Deputy Inspector of Schools as Manager of an institution to hold fresh elections for constituting new Committee of Management of the institution as per provision in the amended scheme of Administration framed for the institution on committee of Management ceasing to exist for not holding of election for constituting new committee of Management within period specified in the amended scheme, the appointment was not open to challenge on the ground that the provision in the scheme was not in conformity with provisions of the Act. A provision in a Scheme of Administration laying down the term of office of the members of a Committee of Management and that such members shall cease to hold such office automatically on expiry of a particular term is fully in consonance with the provisions contained in the Act, the Schedule and the Regulations framed under the Act and no exception can be taken to it. Likewise no exception can be taken to the provision in the amended scheme that in such cases the person appointed by the Deputy Director shall take steps for holding the election for constituting the Committee of Management. Making of such provision comes within the ambit of the authority to make provision for constituting the Committee of Management for periodical elections. The provision in the scheme could also not be challenged on the ground of its being not

authorised by S. 16 D as provision is one which is aimed at proper and efficient administration and management of the institution. In S. 16 D any implication could not be read that the legislature intended to completely rule out a provision being made in the Scheme for proper and efficient administration and management of an institution in contingencies not covered by S. 16 D of the Act. (Paras 15, 18)

(B) Constitution of India, Art. 226 — Writ petition — Conduct of party — Manager of Committee of Management governed by U. P. Intermediate Education Act not challenging different procedure in amended scheme of Administration for holding election for appointment of Committee of Management immediately after framing of it — Scheme, indeed, approved by Committee of Management — Manager also following new procedure on advice of authority — In view of conduct of Manager, he is precluded from challenging amended scheme. (U. P. Intermediate Education Act (2 of 1921), S. 16A). (Para 20)

Cases Referred Chronological Paras

1980 All LJ 683, 1980 All WC 399 (FB) 17

S. N. Agarwal for Petitioners. Standing Counsel for Respondents.

H. N. SETH, J. — By this petition under Art. 226 of the Constitution petitioner 2 Chhatar Singh seeks relief against the order of the Deputy Director of Education, Meerut (respondent 1) dt. 20th June 1984 appointing Sri Satya Prakash Tayal, Asstt. Deputy Inspector of Schools (respondent 3) as Manager of the institution known as Kisan Higher Secondary School, Barauli and authorising him to after finalising the list of members hold fresh elections for constituting a new Committee of Management for running the said institution.

2. Kisan Uchchatar Madhyamik Vidyalaya Barauli is an educational institution recognised under the provisions of the Intermediate Education Act, 1921 (hereinafter referred to as the Act) and its affairs are to be conducted in accordance with the scheme of administration framed under the provisions of the said Act. The Scheme of Administration framed by the institution was approved by the Deputy Director of Education, Meerut on 4-9-1965. Subsequently the same was vide order D/ 18.12.1983 amended so as to print it in accordance with the provisions of the Act as amended by the Intermediate Education (Amendment) Act, 1980.

3. Petitioner Chhatar Singh claims that in the normal course election of the member and the office bearers of the Managing Committee as envisaged by the duly approved Scheme of Administration took place on 19th April, 1981 in which Sri Chandar Singh was elected as the President and the petitioner was elected as the Manager. In the same meeting, one Sheoraj Singh was elected as Asstt. Manager. These office bearers were to as provided by the Scheme hold office for a period of three years or till their successors were duly elected. In the month of January, 1984, the petitioner initiated disciplinary proceedings against the principal of the institution and made an order placing him under suspension. The principal of the institution then addressed a letter to the District Inspector of Schools on 2.2.1984 contending that the order placing him under suspension had been made by persons who claimed to be members of a Managing Committee which had no legal existence and that he continued to be the principal of the institution. Along with the aforesaid letter the principal also submitted a list of persons who according to him were the members and office bearers of the Committee of Management entitled to function as such. The District Inspector of Schools vide his order dated 25.2.1984 respectively Sri Udal Singh (respondent 4) as Manager of the institution.

4. Petitioner 2 then made a representation to the Deputy Director of Education contending that Sri Udal Singh who had been recognised by the District Inspector of Schools as a Manager of the institution was not even a member of the society and that all proceedings taken by various persons to remove him from the office of Manager vide resolution purported to have been passed on 31.1.1984 were absolutely illegal and void. He therefore prayed that the order of the District Inspector of Schools D/ 25.2.1984 be set aside and the list of members and office bearers submitted by the principal on 2.2.1984 be treated as null and void.

5. The Deputy Director of Education took

not cognizance of the dispute and issued notices under S 36-A of the Act to concerned parties requiring them to place their respective versions before him The Deputy Director also made an order staying operation of the order made by the District Inspector of Schools on 25 2 1984 recognising Sri Udal Singh as the Manager and instructed him to in case there was some difficulty in disbursing the salary of teachers and other employees of the institution take requisite action in that regard in accordance with the provisions contained in Payment of Salaries Act. The District Inspector of Schools vide his order dt 12 4-1984 made under the provisions of Payment of Salaries Act directed single operation of institution's account The petitioners then filed a petition under Art 226 of the Constitution before this Court and obtained an order staying operation of the District Inspector of Schools order dt 12 4 1984

6 In pursuance of the notices issued by the Deputy Director of Education in connection with the dispute regarding right to manage the institution both petitioner 2 and Sri Udal Singh put in their respective claims before the Deputy Director of Education According to Sri Udal Singh last elections for constituting the Committee of Management were held on 20th April 1981 and not on 19th of April 1981 as alleged by petitioner 2 He claimed that as a result of the election amongst others, following persons were elected as office bearers of the Committee –

1 Sri Balbir Singh President

2 Sri Chhatar Singh Manager and

3 Sri Rampal Singh son of Sri Chhatar Singh Asstt Manager

Inasmuch as it was not open to the father and son to act as Manager and Asstt Manager at one and the same time steps were taken to remove petitioner 2 from the office of Manager Petitioner 2 was vide resolution dt 31 1 1984 removed from the office held by him and in his place Sri Udal Singh was elected as Manager for running the institution for the remaining period

7 While the dispute was still pending consideration before the Deputy Director of Education petitioner Chhatar Singh claims to have convened a meeting for electing the members and office bearers of the Committee of Management for the next three years on 15 4-1984 According to him he was elected as Manager with Sri Chandar Singh as the President and Sri Sheoraj Singh as Asstt Manager The District Inspector of Schools however informed petitioner 2 that as the election had not been conducted in accordance with the procedure specified in the amended Scheme of Administration the same was of no consequence Petitioner 2 then acting upon the advice of the District Inspector of Schools got a notice for holding the elections published in newspaper on 16 June 1984 He claims that fresh elections were in fact held on 24th June 1984 in which the same team which had been elected in the meeting of 15th April 1984 was re elected

8 The Deputy Director of Education after considering the matter in detail was inclined to the view that the case of petitioner 2 that in the year 1981 the elections for the office bearers and members of the Committee of Management took place on 19th April 1981 did not appear to be correct and according to him the election in that year took place on 20th April 1981 in which the persons mentioned by Udal Singh namely, Sri Balbir Prasad petitioner 2 and Ram Pal Singh were elected as President Manager and Asstt Manager respectively He held that under the Rules it was not possible for petitioner 2 and his son Rampal Singh to act as Manager and Asstt Manager at one and the same time Accordingly the only course open was to remove Sri Chhatar Singh from the Managing Committee However inasmuch as the resolution dt 31 1 1984 removing Chhatar Singh from the post of Manager was as per provisions of the amended Scheme of Administration not placed before the general meeting within one month it became inoperative The Deputy Director of Education then went on to observe that in any case the term of the elected Committee of Management expired on 22nd April 1984 and as per Cl 7 of the amended Scheme of Administration the term of the office bearers of the said Committee also came to an end on 23rd May 1984 The elections held by Chhatar Singh on 24th June 1984 were irregular and of no effect Inasmuch as no member of the old Committee of Management existed he had no option but to appoint an Administrator and to direct him to hold fresh elections for constituting the Committee of Management in accordance with

the provision of the amended Scheme of Administration. In the result the Deputy Director passed the impugned order on 20th June 1984 appointing Sri Satya Prakash Tayal Asstt. Deputy Inspector of Schools Bulandshahr as the Administrator and requested him to make arrangements for holding fresh elections for constituting the new Committee of Management of the institution in accordance with the provisions of the amended Scheme of Administration.

9. Aggrieved by the Deputy Director's order dt. 20th June 1984 the petitioners filed the present petition before this Court and prayed that it may be quashed and the respondents be restrained from interfering with petitioner's right to function as Manager of the institution. Subsequently petitioner filed an application on 20th December 1984 praying that he may be allowed to amend the writ petition and he be permitted to incorporate certain additional facts and new grounds directed towards questioning the effect of the amended Scheme of Administration.

10. It is not disputed that according to the original Scheme of Administration as approved by the Deputy Director the members and office bearers of the Committee of Management whose term expired were to continue to hold office till their successors were elected. However the said Scheme was amended vide order of the Deputy Director dt. 19.12.1983 and as per Clause 7 of the amended Scheme the term of Committee as well as that of its members in 3 years and on expiry of the said period the members are to continue to hold office only for a period of one month more. The clause further provides that in case no new Committee takes over on the expiry of three years and one month the term of the Committee and its members would automatically come to an end and the Deputy Director has to appoint a Prabandh Sanchalak (Administrator) who has to take immediate steps for holding elections for constituting the Committee of Management and who has to in the meanwhile exercise full powers of the Committee of Management for managing the institution. In the instant case if the matter is looked into from the point of view of the amended Scheme of Administration there is no escape from the conclusion that in any case the said period of three years and one month expired on 23-5-1984 and the petitioner could only hereafter act as Manager of the institution on the basis of the elections held in the year 1981.

11. Learned counsel for the petitioners contended that in any case the elections in the case were held by petitioner 2 on 15th April 1984 i.e. within a period of 3 years but then under the advice of the District Inspector of Schools they were again held on 24-6-1984 after making necessary advertisement in newspaper on 18 June 1984. According to the learned counsel, since the elections had already taken place the Deputy Director could not take recourse to Clause 7 of the amended Scheme of Administration and appoint an Administrator requiring him either to hold fresh elections for the Committee of Management or to manage the institution in the meanwhile.

12. We are unable to accept the submission made by the learned counsel for the petitioners. Even if for arguments sake it be assumed that the petitioner was competent to act as Manager on 15th April, 1984 (a question on which we are not expressing any concluded opinion) and was on that date competent to convene a meeting for holding the elections for constituting a new Committee of Management the said meeting had as pointed out by the District Inspector of Schools, not been validly convened. The petitioner also accepted this position when he took steps to convene a fresh meeting by inserting notices in the newspaper dt. 1-6-1984. Having done so it is not open to the petitioner to rely upon the elections that were held at his instance on 15th April, 1984. That election therefore cannot be relied upon to take the case out of the ambit of Clause 7 of the amended Scheme of Administraton. It is not the case of the petitioner that any other meeting for the purpose took place within the period of three years and one month. The meeting convened by means of the notice published in the newspaper on 1st June 1984 admittedly fell outside the period of 3 years and one month specified in Clause 7 of the amended Scheme of Administration. There is thus no escape from the position that in the instant case Clause 7 of the amended Scheme of Administration became operative and the Committee of Management along with its members had ceased to exist. In the circumstances, only course open to the Deputy Director was to appoint an Administrator and

to direct him to hold fresh elections for constituting a new Committee of Management. The elections alleged to have taken place on 24th June 1984 are in the circumstances of no consequence. The impugned order passed by the Deputy Director appears to be fully in consonance with the provisions contained in Clause 7 of the amended Scheme of Administration.

13 Faced with the above position learned counsel for the petitioner contended that in the circumstances modification of the Scheme of Administration directed by the Deputy Director vide his order dt 19 12 1983 was illegal and that the rights of the parties continued to be governed by the original Scheme as approved by the Deputy Director in the year 1965.

14 In support of his submission learned counsel for the petitioners referred us to the provisions contained in S 16-D of the Act which empowers the State to appoint an Authorised Controller for running a recognised institution in certain contingencies. The submission of the learned counsel is that the Scheme of Administration cannot make a provision for appointment of an Authorised Controller or Administrator in circumstances other than those specified in S 16-D of the Act. In the instant case the Deputy Director has appointed an Administrator to run the institution on ground that the new Managing Committee has not been elected within the stipulated time. This according to the petitioner cannot be done as it is not one of the contingencies for the purpose envisaged by S 16 D(3) of the Act.

15 Section 16 CC of the Act provides that the Scheme of Administration in relation to any institution whether recognised before or after the commencement of the Intermediate Education (Amendment) Act 1980 shall not be inconsistent with the provisions laid down in Schedule III which stipulates that every Scheme of Administration shall provide for the procedure of constituting the Committee of Management and for periodical elections. Regulations framed under the Act inter alia require that a Scheme of Administration should provide for a procedure for constituting the Committee of Management and term of its office. In our opinion a provision in a Scheme of Administration laying down the term of office of the members of a Committee of Management that such members shall cease to hold such office automatically on expiry of a particular term is fully in consonance with the provisions contained in the Act the Schedule and the Regulations framed under the Act and no exception can be taken to it. Likewise no exception can be taken to the provision in the amended Scheme that in such cases the person appointed by the Deputy Director shall take steps for holding the election for constituting the Committee of Management. Making of such provision comes within the ambit of the authority to make provision for constituting the Committee of Management for periodical elections.

16 Only question that survives for consideration in this regard is whether in the context of the provision contained in S 16 D of the Act in cases where the term of a Committee of Management and its members has come to an end and there is no one competent to run the affairs of the institution can the Scheme make a provision authorising the Deputy Director to nominate a person to run the affairs of the institution till a new body competent to take over the management of the institution comes into existence.

17 In the case of Committee of Management v Dy Director of Education 1980 All WC 399 (1980) All LJ 683) a Full Bench of this Court after considering relevant provisions of the Act observed thus —

> The use of the words shall amongst other matters in sub-s (1) of S 16 A leaves no room for doubt that apart from the matters specifically mentioned in sub-s (1) of S 16-A a Scheme can legitimately provide for other matters provided they are not in conflict with the provisions of the Act or the regulations framed thereunder and aim at proper and efficient administration and management of recognised institution which is essential for ensuring a satisfactory education system.

18 In the case before us there can be no doubt that the provision in the amended Scheme to the effect that where the term of the Managing Committee and its members has come to an end and there is no one to run the affairs of the institution the institution should be managed by a nominee of the Deputy Director of Education till a competent body

comes into existence is a provision which is aimed at proper and efficient administration and management of the institution What has to be looked into in this regard is whether such a provision in the Scheme is in conflict with any provision contained in the Act or the Rules and Regulations framed thereunder Learned counsel for the petitioners contended that the provisions contained in Clause 7 of the amended Scheme of Administration had the effect of contravening the provisions of S 16D of the Act Section 16-D deals with appointment of an Administrator or an Authorised Controller to run the affairs of an institution in certain contingencies mentioned therein Accordingly where an Administrator has to be appointed in the contingencies mentioned in S 16 D he has to be so appointed in accordance with the procedure laid down therein It may be that in such cases the Scheme of Administration cannot lay down a procedure different from that stipulated by S 16 D However it does not mean that in contingencies to which S 16 D does not apply no provision for interim management can be made in the Scheme even though such a provision is aimed at a proper and efficient administration and management of the institution Such a provision can exist in the scheme of administration without in any way affecting the scope and ambit of the field covered by S 16 D In the circumstances no question of any conflict between the Scheme and the provisions contained in S 16 D can possibly arise We are also not prepared to read in S 16 D of the Act any implication that the legislature intended to completely rule out a provision being made in the Scheme for proper and efficient administration and management of an institution in contingencies not covered by S 16 D of the Act

19 No other provision has been brought to our notice which would stand stultified by the provisions contained in Clause 7 of the Scheme of Administration As already stated the provision contained in the Scheme of Administration for appointment of an Authorised Controller for running the institution in cases where the office bearers of the Managing Committee have actually ceased to hold office after expiry of their term is a provision which can co-exist along with the provisions contained in S 16 D We are accordingly of opinion that the Scheme does not stand vitiated for aforementioned reason

20 Learned counsel for the petitioners next contended that under the law it was for the Management to frame the Scheme of Administration and to make amendments therein The Deputy Director of Education could if at all call upon the Management to modify the Scheme of Administration He could not himself make any modification in the Scheme till the same was proposed by the Management and that the Scheme would not stand amended or modified till the Management had passed a resolution in terms of the direction in that regard issued by the Deputy Director Apart from the fact that on behalf of the respondents it has been asserted that the direction made by the Deputy Director for amending the Scheme in the year 1983 has actually been approved by the duly constituted Managing Committee we feel that the petitioners cannot be permitted to raise these grounds at this stage The order making amendment in the Scheme of Administration was made by the Deputy Director as far back as 18 12 1983 The petitioner did not take any steps to question that order immediately instead when it was brought to his notice that the elections had to be conducted in accordance with the amended Scheme of Administration he accepted the advice and made an attempt to hold fresh elections in accordance with the provisions contained in the amended Scheme of Administration It is only when it has been found that the petitioner is under the amended Scheme of Administration not entitled to function as a Manager of the institution that he has now taken up the point to question the applicability of the amended Scheme Administration In view of the conduct of the petitioner we are not inclined to permit him to raise any question with regard to any infirmity in the amended Scheme of Administration at this stage

21 In the result we are not satisfied that the Scheme of Administration as amended vide order of the Deputy Director of Education dt 19 12 1983 suffers from any infirmity The impugned order being perfectly in consonance with the amended Scheme of Administration cannot be interfered with The petition therefore fails and is dismissed

Petition dismissed

1986 ALL L J 94

K N SINGH AND A S SRIVASTAVA JJ

Brijbasi Pathak Petitioner v State of Uttar Pradesh and others Respondents

Habeas Corpus Petn No 4848 of 1985 D/ 16 8 1985

(A) National Security Act (65 of 1980), S 8 — Opportunity to make representation — Ground of participation in dacoities — Identification parade held — Statements recorded under S 161, Cr P C and identification memo not supplied to detenu — Effective opportunity to make representation denied — Detention order is vitiated (Constitution of India, Art 22(5))

(Para 5)

(B) National Security Act (65 of 1980), S 3(2) — Preventive detention — Legality — Grounds of murderous assault on two individuals and of killing a person in altercation between two parties during enquiry by A.D O Panchayat s relating to no confidence motion — None is suggestive that detenu s activity endangered public peace and tranquillity or that activities were directed towards general members of public — Detention is vitiated as grounds forming satisfaction did not relate to public order (Constitution of India, Art. 22(5))

(Para 6)

Cases Referred Chronological Paras

(1985) Habeas Corpus Petn No 11151 of 1984 D/ 1 8 1985 (All) Ashok Dixit v State of U P 6

M Katju for Petitioner Dy Govt Advocate for Respondents

K. N SINGH, J — Brijbasi Pathak the petitioner has by means of this petition under Art 226 of the Constitution challenged validity of his continued detention

2 The petitioner is under detention in pursuance to an order passed by the District Magistrate Allahabad, dt 1 10-1984 issued in exercise of powers under S 3(2) of the National Security Act 1980 hereinafter referred to as the Act as he was satisfied that the petitioner s detention was necessary with a view to preventing him from acting in any manner prejudicial to public order on five different grounds The grounds mentioned therein are as follows —

(1) That on 19 7 84 in the night at 9 15 p m you along with your associates entered the house of Ravi Shankar resident of village Chibila police station Meja and committed his murder By your this act the village Chibila was gripped with terror and the people were terrified which affected the public order adversely A report of the incident was lodged at the police station by Viju Shankar under S 395/397 I P C and a case was registered During investigation the case was converted into 396 I P C on 22 7 82 charge sheet has been submitted to the Court which is pending trial before the Sessions Judge

(2) On 21 9 82 at 10 00 a m Giria Shankar Shukla, Station Officer Police Station Meja arrested you at Meja Road Bus Stand On a search of your person a country made 12 bore pistol and two cartridges were recovered In connection with the incident Crime No 104/82 was registered and after investigation charge sheet was submitted against you to the Court but due to fear witnesses did not depose against you as a result of which you were acquitted by the Court By your this act of moving about in public openly armed with pistol you caused apprehension in the mind of the people as a result of which public order has been affected adversely

(3) In the night of 9/10 1 83 at about 12 00 a dacoity was committed at the house of Ram Sajiwan Mallah Ramjeet s wife was killed A report of this incident was lodged at the police station on 10-1 83 under S 460 I P C but after investigation the crime was converted into S 396 I P C During investigation your name came into light and you were also identified in the identification proceedings The effect of your such daring acts has affected the public order adversely The case is pending trial before the Court

(4) On 7 10 83 at about 4 30 p m you committed murder of Vishwanath Pathak and Smt Mahrania who was going with him on a cycle by chasing them on a motor cycle on the road Meja Khas to Urva near village Chapartala Vishwanath Pathak died instantaneously on the spot while Smt Mahrania succumbed to her injuries in the hospital As a result of this incident the locality was gripped with fear and terror A report was lodged at the police station

and after investigation charge-sheet has been submitted to the Court on 14 12 83 and is pending trial before the Court

(5) On 18 7 84 at about 3 00 p m some enquiry was being held by A D O Panchayat Rajmani Pandey of Meja block in a matter relating to no confidence motion against Rajit Ram Dubey Pradhan of Gaonsabha During that enquiry Rajit Ram was attacked by your brother Ram Mani Pathak alias Rabar and Bhola Nath Ex Pradhan and his brother by lathis Those present there intervened along with Ram Chandra brother of Rajit Ram Pradhan of Gaonsabha whereupon you got agitated and fired gun shot on Ramchandra Dubey with the licensed gun of Bholanath with the intention to kill him As a result of gun shot injuries Ramchandra Dubey died This desperate act was committed at 3 00 p m in the presence of the general public of the village as a result of which terror and fear was caused which affected public order adversely

On the above grounds the District Magistrate by his order dt 1 10 84 stated that he was satisfied that Brijbasi Pathak was likely to act prejudicially to public order and that it was necessary to detain him for the maintenance of public order

3 The said order was passed under sub s (2) of S 3 of the National Security Act 1980 and the petitioner was detained on 2 10-84 On 22nd Sept 1984 the petitioner submitted representation to the State Government but the same was rejected on 20-11 84 On receipt of the recommendation of the advisory board the State Government confirmed the order of detention on 24-11 84

4 The petitioner has alleged that he was not afforded opportunity of making representation as required by the Act, inasmuch as in respect of grounds Nos 1 and 3 statements of witnesses made under S 161(1) Cr P C and copy of identification memo implicating the petitioner in the incident alleged in the said grounds were not supplied to him These materials were not supplied to the petitioner as a result of which his constitutional right to make representation as contemplated by Art 22(5) of the Constitution was violated The detaining authority namely the District Magistrate Allahabad has filed his affidavit but in his affidavit he has not denied the petitioner's assertion that statements of the witnesses recorded under S 161 Cr P C and the identification memo on the basis of which petitioner's involvement in the incident relating to grounds 1 and 3 were assumed by the detaining authority were not supplied to him

5 Ground No 1 relates to incident of dacoity alleged to have been committed at the house of Ravi Shankar on 19-7 84 while ground No 3 relates to commission of a dacoity at the house of Ram Sajiwan Mallah in the mid night of 9/10 1 1983 In the first information report lodged in respect of both these incidents the petitioner was not named His involvement was however found by the police during investigation on the basis of the statement of a witness recorded under S 161 Cr P C Further the petitioner was put up for identification and the witness identified him On the basis of these materials the police held that the petitioner is involved in the commission of dacoity in the aforesaid two incidents and a charge sheet was submitted against the petitioner to the Court Though copies of the F I Rs relating to the said incidents of grounds Nos 1 and 3 had been supplied to the petitioner but the copies of the statements recorded under S 161 Cr P C involving the petitioner in the incident as well as copy of the identification memo were not supplied to him The statements of the witnesses recorded under S 161 Cr P C and the identification memo were vital and relevant material on the basis of which petitioner was found to have participated in the incidents and as such it was necessary for the detaining authority to have supplied these materials to the petitioner in order to afford him effective opportunity to make representation Since these relevant materials were not supplied to the petitioner the detention order on the basis of grounds Nos 1 and 3 stands vitiated

6 Learned counsel for the petitioner then urged that the facts asserted in grounds 2 4 and 5 have no nexus to public order instead they relate to law and order Ground No 2 relates to the petitioner's arrest on 21 9 82 and after arrest he was found in possession of an unlicensed 12 bore country made pistol along with two cartridges The petitioner was sent up for trial where he was acquitted by the Court. Ground No 4 relates to murderous assault on Vishwanath Pathak and Smt Mahrania in village Chapartala, while ground No 5 relates

to an altercation which took place between two parties on 18 7 84 during an enquiry which was being held by the A D O Panchayat in a matter relating to no confidence motion against Rajit Ram Dubey Pradhan In that altercation the petitioner is alleged to have shot dead Ram Chintara Dubey The impact and the reach of these incidents was not such as to disturb the public peace and tranquility nor they had potentiality to disturb the even tempo of the life of the community In Habeas Corpus Petn No 1115 of 1984 Ashok Dixit v State of U P decided on 1 8 1985 a Division Bench of this Court after considering a large number of decisions of the Supreme Court observed as under —

The act or incident which may be attributed to the detenu may be reprehensible and yet if it concerns only specific individuals and it has no impact on the general members of the community and has no potentiality of disturbing the even tempo of the life of the people it cannot be held to be an activity prejudicial to public order Merely because the activity in a public place creates terror among the spectators does not necessarily have the potentiality to affect the even tempo of the life of the community

Applying the aforesaid principles we are of the view that the incidents as contained in Grounds Nos 2 4 and 5 do not relate to public order instead they relate to law and order The incidents alleged against the petitioner pertain to specific individuals and none of the incidents alleged against the petitioner suggest that the petitioner s activity endangered public peace and tranquility or that his activity was directed towards general members of the public and its impact was so much in the locality that those living there were prevented from following their normal avocation of life

7 In view of the above discussion we are of the opinion that the satisfaction of the District Magistrate in detaining the petitioner on grounds Nos 2 4 and 5 is vitiated as those grounds on which he formed his satisfaction do not relate to public order So far as grounds Nos 1 and 3 are concerned petitioner s detention is vitiated as vital and relevant material was not supplied to him Since all the grounds on which detaining authority passed order directing the petitioner s detention are vitiated the detention order is rendered illegal

8 In the result the petition succeeds and is accordingly allowed The petitioner shall be set at liberty forthwith unless required to be detained in some other case

Petition allowed

1986 ALL L J 96

K C AGRAWAL AND
A SRIVASTAVA JJ

M/s Shivam Talkies and others etc etc Petitioners v State of U P and another Respondents

Civil Misc Writ Nos 8639 9419 8951 and 8969 of 1981 3488 and 5347 of 1982 and 3790 of 1983 D/ 11 9 1985

(A) U P Cinematograph Rules (1951), R 13 — Enhancement of licence fee under — Fee imposed is uniform — Non consideration of size of cinema halls and their situation in small or big towns — Does not make the imposition of fee arbitrary (Constitution of India Art 14) AIR 1981 SC 1863 and AIR 1963 SC 966 Rel on (Paras 13, 15)

(B) U P Cinemas (Regulation) Act (3 of 1956), S 13(2)(b) — Cinematograph Act (2 of 1918), S 9 — U P Cinematograph Rules (1951), R 39 — Licence fee — Enhancement of, by notification issued under R 39 — Valid — R 39 is intra vires provisions of S 13(2)(b) of U P Act 3 of 1956 — R 39 as stood in 1951 was also valid in view of S 9 of Cinematograph Act as amended in 1942 (Paras 16 17)

(C) U P Cinematograph Rules (1951), R 39 — Levy of licence fee under — Validity — Quid pro quo — Facts showing reasonable relationship between levy of fee and services rendered — Levy of fee satisfies the requirement of quid pro quo and is valid (Constitution of India, Art 265)

The relationship between the services rendered and the payment need not be direct It could be indirect or casual The requirement of direct relationship has now undergone a change and even if services rendered are one of general character and not of mathematical exactitude the fee would be valid in case reasonable relationship between the levy of

---

KC/KC/G251/85/VNP

fee and the service rendered is established The levy will not be tax merely because the money collected was not deposited in a separate account AIR 1983 SC 1246 AIR 1983 SC 617 AIR 1985 SC 218 and AIR 1985 SC 756 Foll (Paras 31 36 39)

Where the facts and circumstances were showing that the licensees had received the benefit out of the money paid by them as licence fee and the licensees who were liable to pay receive much more than the general benefits from the authorities levying the fee the element of service required for collecting the fee could be said to be satisfied It was not necessary that the person liable to pay must receive some special benefit or advantage for payment of the same (Para 36)

Cases Referred	Chronological	Paras
AIR 1985 SC 218	19 21 23 26 27 31	34
AIR 1985 SC 756	19 20 21 22 31 34	40
AIR 1985 SC 790	1985 Lab IC 682	23
1984 All LJ 660	(1984) 10 All LR 552	32 33
1984 All LJ 869	(1984) 10 All LR 708	32 33
1984 All LJ 1221	1984 All WC 282	32
AIR 1983 SC 617	19 21 24 31	34 38
AIR 1983 SC 1246	19 21 25 27 28 31	32 33 34
1983 UPTC 283	1982 UPLBEC 431	35
(1983) WP No 13494 of 1981 D/ 28 1 1983 (All) M/s Janta Rice and General Mills v Krishi Utpadan Mandi Samiti Haldwani		34
AIR 1981 SC 1863	1981 Tax LR 2838	13 19 20
AIR 1980 SC 1		27 28
AIR 1980 SC 1008	9 21 22 25 26	32 33 36 50
1980 All LJ NOC 21	1980 UPLBEC 369	35
AIR 1978 SC 1181		10
AIR 1975 SC 846	1975 Tax LR 1455	10
AIR 1975 SC 2037	1975 Tax LR 2013	10
AIR 1973 SC 724	1973 Tax LR 581	10
AIR 1971 SC 344		29 48
AIR 1971 SC 1182		10 48
AIR 1968 SC 1119		10
AIR 1965 SC 1107		10
AIR 1963 SC 966		14 27 30
AIR 1961 SC 459		10 27
AIR 1954 SC 388		10
AIR 1954 SC 400		10

Sidheshwari Prasad, for Petitioners A B L Srivastava and Standing Counsel for Respondents

1986 All. L. J/7 1(2)

K C AGRAWAL, J — These seven writ petitions and others raise the question of validity of enhancement of fee under Rule 13 (sic) of the U P Cinematograph Rules 1951 (hereinafter referred to as the Rules)

2 The main contention of the petitioners in all of the cases was that as no service was being rendered to them by the State of U P not only the enhancement of fee made by the State Government in 1981 raising it from Rs 1200/- to Rs 3600/- on cinemas like that of the petitioners but also the initial imposition of fee was invalid The case of the petitioners was that even if the element of quid pro quo was not necessary to be established with arithmetical exactitude but even broadly and reasonably no co-relationship between the fee and the services rendered to the cinema owners could be established and as such the enhancement of fee from Rs 1200/- to Rs 3600/- was illegal

3 Apart from the aforesaid point, some other minor points have also been raised which we will deal with seriatim

4 For resolving the controversy brief reference to the relevant statutes may be made In 1955 the State of U P passed an Act known as the U P Cinemas (Regulation) Act, 1955 (U P Act No 3 of 1956) (hereinafter referred to as the 1955 Act) for regulating exhibitions by means of cinematographs in the State of U P Before the 1955 Act, the State of U P had framed Cinematograph Rules, 1951 These Rules were framed in exercise of the powers conferred by Section 9 of the Cinematograph Act, 1918 and by the deeming fiction enacted in Section 12 of the 1955 Act, they remain in force

5 Section 3 provides that "save as otherwise provided in this Act" no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act or otherwise than in compliance with conditions and restrictions imposed by such licence Section 4 constitutes District Magistrate to be the licensing authority Section 5 lays down that the licensing authority shall not grant a licence under this Act unless the conditions mentioned in this provision were satisfied. It is for this reason that this section has been headed as "Restrictions on the powers of licensing authority" Section 7 provides that where a

licence has been granted under Section 5 it could be cancelled or revoked in public interest One of the grounds for revocation mentioned in Clause (e) of Sub Section (1 A) read as follows —

the licensee has been guilty of breach of the provisions of this Act or the rules made thereunder or of any conditions or restrictions contained in the licence or of any direction issued under Sub-section (4) of Section 5

6 There are many other clauses in this sub-section of Section 7 However the details of the same are not necessary to be stated hence we omit to do so Section 8 deals with penalties for contravention of the provisions of the Act By Sub-section (1) of Section 12 of the Act, the Cinematograph Act 1918 in so far it relates to the matters other than the sanctioning of cinematograph films for exhibition was repealed in its application by the State of U P However as already stated Sub-section (2) of Section 12 preserved the Rules made under the Cinematograph Act 1918 before the commencement of the 1955 Act and provided that they would continue in force and be deemed to be the Rules made under this Act This Sub-section (2) was brought about by Section 4 of U P Act No 27 of 1974 with retrospective effect Section 13 confers power on the State Government to make Rules for carrying out the purposes of the Act Amongst others, one of the provisions contained in Section 13 is Clause (b) of Sub-section (2) This sub section (2) permits the State Government to frame Rules with regard to levy of fees for grant and renewal of licences for places and cinematograph exhibition The Cinematograph Rules 1951 contain provisions dealing with sanitation ventilation seating accommodation exits fire precautions fire extinguishing appliances prohibition of use of building for purposes other than of a cinema prohibition about entry into projection room or winding room prohibition on naked lights and smoking in projection and winding rooms combustible material etc There are provisions which take care of the interest of cinema goers as well as the licensees

7 Rule 37 provides that in addition to the initial inspection for getting a certificate every permanent building with electrical installation shall be inspected by the Electrical Inspector Sub-rule (3) of Rule 37 deals with inspection by the Licensing Authority It provides

The Licensing Authority shall inspect or cause to be inspected any cinema within his jurisdiction at such intervals as may deem necessary

An inspection book is also required to be maintained by the licensee in which all such inspection notes shall be recorded

8 If at any time during the currency of licence the licensing authority finds breach of any of the provisions of the Act and the Rules it can call upon the licensee to remove the defects within a prescribed period Rule 39 deals with fees for cinematograph licence It lays down the amounts which are payable for the grant or renewal of a licence

9 Counsel appearing for the petitioners urged that two elements are essential in order that a payment be recorded as a fee The first is that payments primarily as fees are in public interest and secondly for some special service rendered According to the petitioners it must be levied in consideration of certain services rendered to the individuals The petitioner s learned counsel cited a number of authorities in support of their submissions One of them is Kewal Krishan Puri v State of Punjab AIR 1980 SC 1008 In this case the Supreme Court laid down the tests for determining whether imposition was a fee or a tax The controversy before the Supreme Court in this case arose out of a number of petitions challenging the imposition of market fees in the States of Punjab and Haryana Mr Justice Untwalia laid down the tests which are necessary to be established before justifying the levy of tax The Hon ble Judge observed

The element of quid pro quo may not be possible or even necessary to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee At least a good and substantial portion of the amount collected on account of fees may be in the neighbourhood of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above

10 Apart from the aforesaid decision

learned counsel referred to several other decisions viz

1 Jagannath Ramanuj Das v State of Orissa AIR 1954 SC 400 2 Ratilal Panachand Gandhi v State of Bombay AIR 1954 SC 388 3 Hingir Rampur Coal Co Ltd v State of Orissa AIR 1961 SC 459 4 Corporation of Calcutta v Liberty Cinema AIR 1965 SC 1107 5 Nagar Mahapalika Varanasi v Durga Das Bhattacharya AIR 1968 SC 1119 6 Indian Mica and Micanite Industries Ltd v State of Bihar AIR 1971 SC 1182 7 Secy Govt of Madras, Home Dept v Zenith Lamps and Electrical Ltd AIR 1973 SC 724 8 State of Maharashtra v Salvation Army Western India Territory AIR 1975 SC 846 9 Govt of Andhra Pradesh v Hindustan Machine Tools Ltd. AIR 1975 SC 2037 10 Chief Commr Delhi v Delhi Cloth and General Mills Co Ltd AIR 1978 SC 1181

11 Counsel for the petitioners urged that between a tax and a fee there is no generic difference Both are compulsory extractions of money for public authorities. But whereas a tax is imposed for public purposes, and is not and need not be supported by any consideration of service rendered in return a fee is levied essentially for services rendered, and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it The services which are to be rendered should be direct and not remote or indirect.

12 Before we deal with this argument and discuss the authorities cited on behalf of the respondents we think it necessary to dispose of two minor controversies

13 One of them was the argument of Sri S P Agrawal that as the fee imposed is uniform and does not take into account the size of the cinema halls and their situation in small towns or big towns the imposition is arbitrary and hit by Article 14 of the Constitution. According to him the rate of fee should have been fixed keeping in view the aforesaid two considerations We do not find any merit in this submission One of the characteristics of fee as laid down in the various authorities of the Supreme Court is that fees are uniform and no account is taken of the varying abilities or capabilities of different recipients to pay In Southern Pharmaceuticals and Chemicals v State of Kerala AIR 1981 SC 1863 the Supreme Court observed

It is equally true that normally a fee is uniform and no account is taken of the paying capacity of the recipients of the service but absence of uniformity will not make it a tax if co-relationship is established

14 In S T Swamiar v Commr for Hindu Religious and Charitable Endowments AIR 1963 SC 966 the Supreme Court held that ordinarily a fee is uniform and no account is taken of the varying abilities but absence of uniformity is not a criterion on which alone it can be said that it is of the nature of tax

15 We are therefore unable to hold that fee imposed by the impugned order of the State Government is hit by Article 14 of the Constitution on the ground stated above

16 One of the learned counsel appearing for the petitioners submitted that Rule 39 of the Cinematograph Rules 1961 by which fee has been imposed is ultra vires the Act inasmuch as neither the Cinematograph Act 1918 nor the 1955 Act authorises the making of such a rule We find no merit in this submission

17 The U P Cinematograph Rules 1951 were framed under Section 9 of the Cinematograph Act 1918 By Section 2 of the Cinematograph Amended Provisions (Amendment) Act 1942 the following amendment in the Cinematograph Act, 1918 was made

In Clause (a) Sub-section (2) of Section 48 of the Cinematograph Act 1918 after the word safety following words shall be added namely

and the fees to be levied for licensing buildings for cinematograph exhibitions and for inspection of electric installations in each buildings

18 Rule 39 therefore as it stood in 1951 can be justified on the basis of the aforesaid amendment However it appears to us that since Section 13(2)(b) of the 1955 Act empowers the State Government to make rules for the fees to be levied for grant and renewal of licences irrespective of the controversy whether

Rule 39 could be framed by the State Government under the U. P. Cinematograph Rules 1951 the present notification issued under Rule 39 of the Rules would be valid having drawn its existence from the 1955 Act. Rule 39 was substituted in 1975 by Notification No. 20-M(3)/75-GAD-L dated 31st July 1975. By this notification, the licence fee was raised to Rs. 1200/- It was in the year 1981 that the licence fee was raised to Rs. 3600/- by means of the amendment by the State Government in that year. Consequently, the present Rule 39 which is the subject matter of challenge in these writ petitions is valid because of the provisions of Section 13(2)(b). In our opinion it was valid initially as well.

19. Coming to the question of service to be rendered to the cinema owners or others who pay licence fee, the submission was that the requirement of service as was previously laid down by the Supreme Court, has undergone a change and now in accordance with the latest pronouncement the element of quid pro quo is not a sine qua non of a fee. For this purpose reliance was placed on Southern Pharmaceuticals and Chemicals v. State of Kerala (AIR 1981 SC 1863) (supra), Municipal Corpn. of Delhi v. Mohd. Yasin AIR 1983 SC 617, Sreenivasa General Traders v. State of Andhra Pradesh AIR 1983 SC 1246, Amarnath Om Prakash v. State of Punjab AIR 1985 SC 218 and City Corpn. of Calicut v. T. Sadasivan AIR 1985 SC 756.

20. The Supreme Court in City Corpn. of Calicut v. T. Sadasivan (supra) has laid down that though fee must have relation with the services rendered, but the services could be remote or indirect. To us it appears that to enable a fee to be levied an immediate advantage measurable in terms of money conferred on the payer is no longer a requirement for the purposes of upholding it. That would be too narrow a view of the concept of fee. It may be true that fee must have relation with the services rendered, but it could be indirect. These authorities are, in fact, based on the decision of the Supreme Court given in Southern Pharmaceuticals and Chemicals v. State of Kerala (AIR 1981 SC 1863) (supra) where the Supreme Court through Hon'ble A. P. Sen, J., observed:

It is also increasingly realised that the element of quid pro quo stricto sensu is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax. We may in this connection refer with profit to the observations of Seervai in his Constitutional Law.

21. Counsel for the petitioners urged that the view taken in the aforesaid decision by the Supreme Court and in Sreenivasa General Traders v. State of Andhra Pradesh (AIR 1983 SC 1246) (supra) is in conflict with the Constitutional Bench judgment in Kewal Krishan Puri's case (AIR 1980 SC 1008) (supra); hence the decision given in these two cases which had formed the basis for the subsequent decisions in City Corpn. of Calicut v. T. Sadasivan (AIR 1985 SC 756) (supra), Municipal Corpn. of Delhi v. Mohd. Yasin (AIR 1983 SC 617) (supra) and Amarnath Om Prakash v. State of Punjab (AIR 1985 SC 218) (supra) have to be held not binding on this Court.

22. We are unable to accept the submission of the petitioner's learned counsel. Kewal Krishan Puri's case (supra) was interpreted by the Supreme Court in subsequent decisions. After interpreting the aforesaid decision, the Supreme Court stated in City Corporation of Calicut v. T. Sadasivan (supra) as follows:

It is thus well settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee.

23. In Gasket Radiators Pvt. Ltd. v. Employees State Insurance Corpn. AIR 1985 SC 790 the Supreme Court approved its decision in Amarnath Om Prakash v. State of Punjab (AIR 1985 SC 218) (supra).

24. On the controversy whether the benefit of services rendered could be direct or it could be indirect as well, the Supreme Court relied

on Municipal Corpn of Delhi v Mohammad Yasin (AIR 1983 SC 617) (supra) In this case the observations made were

For a fee must have relation to the services rendered or the advantages conferred such relation need not be direct A mere casual may be enough

25 Learned counsel for the petitioners laid emphasis turn by turn on the proposition of law laid down in Kewal Krishan Puri's case (AIR 1980 SC 1008) and urged that since the said judgment was a Constitutional Bench judgment, it was binding on the Supreme Court and, as such the later decisions dissenting from Kewal Krishan Puri's case were not binding on this Court This submission does not appeal to us In later decision in Sreenivasa General Traders v State of Andhra Pradesh (AIR 1983 SC 1246) (supra) Hon'ble A P Sen J held that

It would appear that there are certain observations to be found in the judgment in Kewal Krishan Puri's case AIR 1980 SC 1008 (supra) which were really not necessary for the purposes of the decision and go beyond the occasion and therefore they have no binding authority though they may have merely persuasive value

26 With the above view Hon'ble O Chinnappa Reddy J expressed agreement by deciding M/s Amarnath Om Prakash v State of Punjab (AIR 1985 SC 218) (supra) In the opinion of Hon'ble A P Sen J the observations made in Kewal Krishan Puri's case that substantial portion of the amount collected as fee in the neighbourhood of two thirds or three fourths must be spent for rendering services in the market to the payer of fee were an obiter

27 In M/s Amarnath Om Prakash v State of Punjab (supra) the Supreme Court, after referring to H H Sudhindra Thirtha Swamiar v Commr AIR 1963 SC 966 Hingir Rampur Coal Co Ltd v State of Orissa, AIR 1961 SC 459 and H H Shri Swamiji v Commr Hindu Religious and Charitable Endowments Dept AIR 1980 SC 1 agreed with Sreenivasa General Traders v State of Andhra Pradesh (AIR 1983 SC 1246) (supra) and made the following observations

The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest

28 The Supreme Court in this case also approved Sreenivasa General Traders v State of Andhra Pradesh (supra) where it was held that co-relationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude To the same effect the Supreme Court has taken the view in H H Shri Swamiji v Commr Hindu Religious and Charitable Endowments Dept (supra) In this case Chandrachud C J said

What has to be seen is whether there is a fair correspondence between the fee charged and cost of services rendered to the fee payers as a class

29 In fact, earlier to these recent decisions also the Supreme Court had found that for a fee to be valid it was not necessary that direct benefit should be conferred to the payers In the Delhi Cloth and General Mills Co Ltd v Chief Commr of Delhi AIR 1971 SC 344 the Supreme Court observed

A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of service

30 In H H Sachindra Thirtha Swamiar v Commr (AIR 1963 SC 966) (Supra) the Supreme Court had said

The expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service

31 From what we have said above it follows that the relationship between the services rendered and the payment need not be direct it could be indirect or casual. The requirement of direct relationship has now

undergone a change and even if services rendered are one of general character and not of mathematical exactitude the fee would be valid in case reasonable relationship between the levy of fee and the services rendered is established. This is the purport of the law laid down by the Supreme Court in recent decisions after Kewal Krishan Puri's case. With regard to Kewal Krishan Puri's case the Supreme Court has found in Sreenivasa General Traders v. State of Andhra Pradesh (AIR 1983 SC 1246) (supra), Municipal Corpn. of Delhi v. Mohammad Yasin (AIR 1983 SC 617) (supra), Amarnath Om Prakash v. State of Punjab (AIR 1985 SC 218) (supra) and City Corpn. of Calicut v. T. Sadasivan (AIR 1985 SC 756) (supra) that the observations in Kewal Krishan Puri's case have not to be followed being obiter in nature. We are bound by these pronouncements of the Supreme Court.

32. Counsel relied upon a decision of Division Bench of this Court in Shree Mahalaxmi Vypar Kendra v. Krishi Utpadan Mandi Samiti, Powayan, 1984 All WC 282 (1984 All LJ 1221) for submitting that Sreenivasa General Traders v. State of Andhra Pradesh (AIR 1983 SC 1246) (supra) was not in conflict with Kewal Krishan Puri's case. In two other decisions of our Court in Shyam Behari Mathur v. Zila Parishad, Mainpuri (1984) 10 All LR 552 (1984 All LJ 660), Anil Rice Mill, Jasrana v. Krishi Utpadan Mandi Samiti (1984) 10 All LR 708 (1984 All LJ 869) the decision in the case of Sreenivasa General Traders was followed. In the earlier decision, the Division Bench observed:

In the latest pronouncement of the Supreme Court in the case of Sreenivasa General Traders v. State of Andhra Pradesh (AIR 1983 SC 1246) their Lordships reviewed the entire law on the subject and observed that the traditional view that there must be actual quid pro quo for a fee has undergone a sea change subsequent to the decision in Kewal Krishan Puri v. State of Punjab (AIR 1980 SC 1008).

33. We are in respectful agreement with the view taken in Shyam Behari Mathur v. Zila Parishad, Mainpuri (supra) and Anil Rice Mill, Jasrana v. Krishi Utpadan Mandi Samiti (supra). Kewal Krishan Puri's case had been considered, discussed and it was found by the Supreme Court in Sreenivasa General Traders v. State of Andhra Pradesh (supra) that it had incorrectly found that substantial portion of the fee collected was required to be spent for justifying the levy. A casual or reasonable relationship between the levy of the fee and the services rendered would satisfy the requirement. Learned counsel for the petitioners urged that the law laid down to that effect would amount to upholding of a levy of fee even where no services are being rendered. A fee in that event would become a tax although it was never levied as such by the authority imposing the same. With this submission we are unable to agree. Neither did the Supreme Court nor have we said that even where no services are rendered at all fee would continue to have that character. Services have to be rendered. But now the concept of percentage etc. for justifying the rendering of service has undergone a change. According to the view taken by the Supreme Court even a casual relationship between the two would be sufficient.

34. In the case of M/s. Janta Rice and General Mills v. Krishi Utpadan Mandi Samiti, Hardwar (decided on 28.1.1983) the learned Judges found that the amount which had been spent over constructions falling outside the market yard had to be ignored and could not be pleaded in justification of a market levy. In this case was distinguished in Anil Rice Mill. Moreover, while deciding Janta Rice and General Mills, the Court had no benefit of the Supreme Court decisions which are Sreenivasa General Traders v. State of Andhra Pradesh (AIR 1983 SC 1246), Municipal Corpn. of Delhi v. Mohammad Yasin (AIR 1983 SC 617), Amarnath Om Prakash v. State of Punjab (AIR 1985 SC 218) and City Corpn. of Calicut v. T. Sadasivan (AIR 1985 SC 736) (supra).

35. Strong reliance was placed by the petitioners on Oriental Glass Works v. Municipal Board, Firozabad (1980 UP LBEC 369 (1980 All LJ NOC 21) and Capson Poultry Farm, Indira Colony v. Municipal Board, Kashipur, 1983 UP STC 283 in support of their submission. Both of these cases are distinguishable on facts. Moreover, for what we have said above, no further discussion dealing individually with these cases is required. What is now required to justify a levy of fee is only a casual relationship between the benefit and the amount paid.

36 The interpretation of the decision in Kewal Krishan Puri v State of Punjab (AIR 1980 SC 1008) (supra) made by the Supreme Court in the four decisions referred to above is the law declared within the meaning of Article 141 of the Constitution The law declared is binding We cannot hold that Kewal Krishan Puri s decision still occupies the field and is binding in all respects irrespective of the subsequent decisions of the Supreme Court What has been laid down in Kewal Krishan Puri s case has been whittled down We are bound by the interpretation made by the Supreme Court of that decision and to follow the law declared in subsequent pronouncements The law laid down is that the traditional concept in a fee of quid pro quo has undergone a transformation and that though the fee must have relation to the services rendered or the advantages conferred such relation need not be direct a mere casual relation may be enough It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered Even general benefit to a person who pays the fee would justify the levy

37 Some of the petitioners counsel also urged that as required by the Act the Rules should have been placed before the two Houses of the State and as this was not done the Rules relied upon are invalid This submission cannot be accepted in view of the averment made in the counter affidavit The counter affidavit has stated that the amended Schedule was going to be placed before the two Houses Nothing has been shown to us to come to the conclusion against the State on this point Moreover placing of a Rule before the two Houses is only directory

38 Much was said by referring to Rule 39 of the Rules that as the amount will go in deposit in the State Revenue the amount charged by way of licence fee under Rule 39 is not fee According to the counsel for the petitioners the money collected must be deposited in a separate account and as it is not being done the same is a tax and not fee In Municipal Corpn Delhi v Mohd Yasin (AIR 1983 SC 617) (supra) the Supreme Court held

The money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax

39 The above decision disposes of this argument of the learned counsel

40 By taking us through the various provisions of the Rules counsel urged that the benefits if any are being conferred to the cinemagoers and as such those benefits would detract the levy from the character of fee No merit can be attached to this submission The Supreme Court repelled a similar argument in the City Corpn of Calicut v T Sadasivan (AIR 1985 SC 756) (supra) when it observed

That others besides those paying the fees are also benefited does not detract from the character of the fee

41 Two counter affidavits have been filed by the State of U P One counter affidavit was by the Finance (Entertainment Tax) Section of the U P Civil Secretariat In this affidavit it was alleged that services were being rendered to the cinema owners in lieu of fee which was being realised from them as such By referring to Section 7 it was alleged that the Entertainment Tax Department looks after the amenities which have to be provided for Along with the counter affidavit a Chart described as CA 1 was filed This Chart has been clarified by filing a supplementary counter affidavit on behalf of the State From the Chart given along with the supplementary counter affidavit it appears that the estimated receipt by way of licence fee at the rate of Rs 3000/ per licence in the year 1981 82 was Rs 21 34 lacs whereas the total expenditure towards the Entertainment Tax Department was Rs 41 73 lacs

42 Sri Sidheshwari Prasad learned counsel for the petitioners in some of these cases urged that whereas the Chart gives the expenditure to be incurred on the Entertainment Tax Department it does not give the figure of money which is received as entertainment tax and therefore this Chart is useless and does not help the Court in deciding the controversy He also urged as was submitted by other counsel as well that the maintenance of the Entertainment Tax Department by the Government was for the purposes of collecting entertainment tax and

therefore, the amount spent on the Entertainment Tax Department could not be taken into consideration while finding out the relationship between the licence fee realised and the benefits conferred. Learned counsel urged that the Entertainment Tax Department, Sanitary Department, Medical Department etc. are not meant exclusively for the cinemas, hence any service rendered by them could not be taken into consideration while finding the benefits which are conferred on the cinema owners.

43 It may be true that the aforesaid Departments are not exclusively engaged in the looking after the interests of the cinema owners and are also doing other duties but that would not justify this Court to reject the expenses incurred on them. An officer of one Department may discharge several duties. For example the District Magistrate and the U.P. Entertainment Tax Commissioner both are the licensing authority under the Act. A District Magistrate is appointed under the Code of Criminal Procedure whereas the Entertainment Tax Commissioner is appointed under the U.P. Entertainment and Betting Tax Act but the expenses incurred on these authorities proportionately to the services rendered to the cinemas can be looked into. It may be difficult to find out the exact proportionate amount but the same cannot be overlooked. Apart from these two officers there is a full machinery engaged in the successful implementation of the various provisions of the Rules which are meant for the benefit of the cinemagoers and also for the owners of the cinemas. We have already referred to some of the rules in the beginning of the judgment. Those rules would indicate that the various requirements laid down by rules 16, 17, 20, 21, 22, 23 and 25 directly benefit the cinema owners.

44 Rule 37 provides that in addition to the initial inspection every electric installation shall be inspected by the Electrical Inspector or his representative once every year and if at any such inspection any defects are noticed they are intimated to the management for removal. Under Rule 38 the licensing authority gives notice to the licensee requiring him to remove the defects. All these and many other provisions beginning from Rules 6 to 37 are meant for conferring the benefit to the licensees as well. It may be true that some of the officers, Inspectors and Clerks do the job of checking entertainment tax as well but that would not justify the submission that the expenditure incurred on them should be totally ignored particularly when they are meant for the proper compliance of the rules which is said above, inter alia, for the benefit of the licensees as well.

45 In paragraph 7 of the supplementary counter affidavit it is stated that under a District Entertainment Tax Officer there are five to six Entertainment Tax Inspectors who are required to inspect the cinema houses of their jurisdiction. In case there is any defect the Entertainment Tax Inspectors report the matter to the Licensing Authority. Under Rules 6, 12 and 13 the Medical Health Department of the District is required to see that compliance of the Rules are made. Similar is the duty imposed on the Fire Officer to see the compliance of Rules 6, 16 and 17.

46 Taking all these facts into consideration we find that the element of rendering services is fully proved. In terms of money it may not be possible to find out the exact figure but taking the overall view of the picture one would find irresistibly that licensees receive the benefit out of the money paid by them as licence fee. Further as the licensees who are liable to pay receive much more than the general benefits from the authorities levying the fee the element of service required for collecting the fee is satisfied. We have already held above that it was not necessary that the person liable to pay must receive some special benefit or advantage for payment of the same. It may be noted here that the primary purpose of levying the fee under the Cinematograph Rules 1981 is the regulation in public interest.

47 The validity of levy as fee under the Delhi Factories Rules came up for consideration by Supreme Court. The Supreme Court held that in such case when the question arises whether the levy was in the nature of a fee the entire scheme of the statutory provisions, the duties and obligations imposed on the inspecting staff and the nature of the work done by them were required to be examined for determining the rendering of

services which would make the levy a fee. After examining the various provisions of the Factories Act 1948 and the Rules framed the Supreme Court held that a large number of provisions of the Act particularly in the Chapters dealing with safety involved a good deal of technical knowledge and in the course of their discharge of duties and obligations the Inspectors were expected to give proper advice and guidance so that due compliance of the provisions of the Act could be made. The Supreme Court held that on certain occasions the factory owners were bound to receive a good deal of benefit by being saved from the consequences of the working of dangerous machines or implements of such processes as involved danger to human lives by being warned at the proper time as to the defective nature of the machinery or taking of the precautions which are enjoined under the Act.

48 In our case also we have referred to a number of provisions and have shown that such expert opinion is available to the licensees on account of their obtaining licenses and due to the fact that licence fees are paid. Such opinion the licensees could not get otherwise without spending huge money. The licensees have been saved from spending the same. They can also call the technical staff for assistance as and when any necessity to do so arises due to some defect in the machinery. In Indian Mica and Micanite Industries Ltd. v. State of Bihar (AIR 1971 SC 1182) (supra) the Supreme Court had agreed with the view taken in Delhi Cloth and General Mills Limited v. Chief Commr. of Delhi (AIR 1971 SC 344) (supra).

49 Our attention was drawn to sub-rule (2) of Rule 37 for arguing that for taking assistance of Electrical Inspector special fee is payable hence the expenditure incurred on Electrical Inspector could not be counted for justifying the levy of fee. What we have found after review of the rules is that only for initial inspection by the Electrical Inspector that fee is chargeable and not for subsequent inspections. But even if this question is answered in favour of the petitioners that would not make any difference in the result of the writ petitions. The correlationship between the levy of fee and the benefits conferred has been satisfied more than necessary. It may be that the percentage of benefit conferred and the amount to be spent on the licensees can not be found but that would not affect our finding that correlationship between the two has been established.

50 We have already pointed out above that the granting and renewal of a cinema licence is a regulatory measure. With respect to the regulatory measure the element of quid pro quo is not satisfied in the same manner as it is done in the case of market fee etc. In Kewal Krishan Puri's case (AIR 1980 SC 1008) the Supreme Court itself has noticed this fact and made observations to the following effect:

But then as pointed out in some of the cases noticed earlier the registration fee has been taken to stand on a different footing altogether. In the case of such a fee the element of quid pro quo has not to be satisfied with such direct, close or proximate correlationship as in the case of many other kinds of fees. By and large registration fee is charged as a regulatory measure.

51 In our opinion the taking of licence fee for starting a business and getting its renewal is a regulatory measure. The power to regulate means controlling or state of being reduced to order. If this meaning is taken into consideration we find that close or proximate correlationship as in the case of many other kinds of fees is not required. In our view the fee charged and the services rendered in this case satisfied the requirement of quid pro quo.

52. For what we have said above all the writ petitions are dismissed with costs. The stay orders in all the petitions are discharged. Two months time is given to each one of the petitioners for payment of the licence fee.

Petitions dismissed.

1986 All L. J. 106

B N SAPRU J

M/s Agarwal Brothers Petitioner v State Transport Appellate Tribunal Lucknow and another Respondents

Civil Misc Writ Petn No 241 of 1985 D 30 1 1985

Motor Vehicles Act (4 of 1939), Ss. 58, 60(3) — Renewal of permit — Power of transport authority — Authority is not competent to impose condition on permit holder to pay certain amount while renewing permit by resorting to S 60(3) (Para 5)

Cases Referred Chronological Paras

(1962) Writ Petn No 1251 of 1958 D/ 7 2 1962 (All) Bekan Mal v Regional Transport Authority Allahabad 4

L P Nautiyal for Petitioner Standing Counsel for Respondents

ORDER — This writ petition is directed against the order of the S T A T dt 3 8 84 whereby the State Transport Appellate Tribunal dismissed the appeal of the petitioner

2 The petitioner applied for renewal of his permit which was to expire on 5 9 81 The matter was taken up at the meeting of the R T A held on 27/29 2 84 and 1 3 84 The State Transport Appellate Tribunal has found that the petitioner appeared on that date and was heard and the order against which the appeal has been preferred was made in his presence

3. The appeal was filed on 25-4-84 by the petitioner The State Transport Appellate Tribunal found that the appeal was barred by time as it was presented more than 30 days after the order of the R T A The limitation for filing the appeal has been computed by the Tribunal on the basis that it ran from the date when the order was made Sri L P Nautiyal learned counsel for the petitioner submits that in this case the order was made on 1 3 84 The petitioner applied for the certified copy on 7 3 84 and the certified copy was delivered to the petitioner on 7 4 84 and the appeal was presented on 25-4-84 Under R 71(2) of the Motor Vehicles Rules the limitation for filing an appeal runs from the date of the receipt of the order In this case the order was admittedly received on 7-4-84 and the appeal was presented on 25-4-84 i e within a period of 20 days Even if we add the period on which the order was made and the time taken by the appellant for applying for copy the appeal would be within time The Tribunal was in error in holding that the appeal preferred by the petitioner was barred by time

4 In this case the petitioner's permit expired and he applied for renewal The R T A granted renewal subject to the petitioner's depositing a sum of Rs 10 000/ as fine The Tribunal was of the view that under S 58(2) read with S 64(1)(a) of the Motor Vehicles Act the R T A was competent to impose such a condition Sri L P Nautiyal learned counsel for the petitioner has invited my attention to a decision of Hon'ble Mr Justice A P Srivastava in Writ Petn No 1251 of 1958 Bekan Mal v Regional Transport Authority Allahabad Region Allahabad decided on 7 2 62 In that case the R T A in view of the past conduct of the petitioner while granting renewal of a permit for five years had imposed a condition suspending the permit of the petitioner for one month on the basis of his past record of the operation of the vehicle The learned Judge pointed out that a permit can be suspended under S 60 of the M V Act or under S 123 of the Act It was found in the case before the learned Judge that the permit had not been suspended under S 123 of the Act The suspension was sought to be justified under S 60 of the Act S 60 provides that a permit can be suspended on the grounds (a) to (f) specified therein The learned Judge pointed out that an order of suspension can be made under S 60 of the Act during the existence of a valid permit and on one of the grounds mentioned in the section A permit which has ceased to be operative and which is sought to be renewed cannot be suspended

5 In the present case the order of the R T A has been made under S 60(3) of the Act That section authorises the R T A not to cancel or suspend the permit if the holder of the permit agrees to pay certain sum of money In this case the R T A decided to renew the

permit on the condition that the petitioner pay a sum of Rs 10 000/ This the authority was not competent to do while renewing a permit

6 In the result the writ petition succeeds and is allowed The impugned order dt 3-4 83 of the State Transport Appellate Tribunal (Annexure-4 to the writ petition) and the impugned order of the R T A dt 27/28 2 84 and 1 3 84 in so far as it required the petitioner to deposit/pay a sum of Rs 10000/ are quashed The petitioner is entitled to his costs

7 I may add that the writ petition came up for admission on 10 1 85 on which date the Standing Counsel was given time up to 28-4 85 to file a counter affidavit and it was made clear that the case would be disposed of on that date The Standing Counsel states that the counter affidavit is being prepared However as there is no factual dispute as to facts and a pure question of law arose the writ petition has been decided at the time of admission

Petition allowed

1986 ALL. L J 107

O P SAXENA AND B L YADAV JJ

Chandrekesh Rai Petitioner v Deputy Director of Education V Region Varanasi and others Opposite Parties

Civil Misc Writ Petn No 4917 of 1984 D/ 29 1 1985

U P Intermediate Education Act (2 of 1921), S 16A(7) — Reference to Dy Director of Education — Existence of two rival management committees is a condition precedent — Mere fact that District Inspector of Schools made a reference to Dy Director would not confer any jurisdiction on the latter (Para 11)

Cases Referred Chronological Paras

1983 All LJ 1255 1983 UP LBEC 438 7 10

S N Singh and R N Singh for Petitioner Standing Counsel for Respondent

---

DC/GC/B872/83/VRK/RSK

O P SAXENA, J — By this petition under Art 226 of the Constitution the petitioner has prayed for a writ of certiorari quashing the impugned orders dated 1st Dec 1983 (annexure II) and 21st Jan 1984 (Annexure VI) and directing respondent No 1 to decide the controversy under u/s 16 A(7) of the Intermediate Education Act

2 Dispute relates to the management of Adarsh Uchchttar Madhyamik Vidyalaya Narhi district Ballia On 13th Feb 1979 Sri Gauri Shankar Rai was elected President Sri Vishwanath Rai was elected Manager and Sri Chandrakesh Rai was elected Deputy Manager On 31st Dec 1982 a fresh election is said to have been held in which Sri Baleshwar Prasad Rai was elected President and Sri Hridaya Narain Rai (R 3) was elected Manager The District Inspector of Schools Ballia (R 2) recognised the management committee of which Sri Hridaya Narain Rai was the Manager Three writ petitions were filed Writ petition Nos 6875 of 1980 and 7882 of 1983 were filed by the petitioner The three writ petitions were decided by a common judgment dt 17 11 83 vide Annexure I Writ petition No 7882 of 1983 against the order of District Inspector of Schools recognising the Management Committee elected on 30th May 1982 was dismissed On 1 12 83 the District Inspector of Schools again recognised the said Committee vide Annexure II Annexures IIIB dt 24 11 83 and III dt 29 11 83 are the representations made by the petitioner to Deputy Director of Education and District Inspector of Schools respectively On 5 12 83 the District Inspector of Schools referred the dispute to the Deputy Director of Education vide Annexure IV He passed an order of single operation and stayed the order dt 1 12 83 on 20 1 84 the Deputy Director of Education refused to decide the dispute vide Annexure V on the ground that the High Court had already done so in the judgment dt 17 11 83 On 21 1 84 the District Inspector of Schools again recognised the new Management Committee vide Annexure VI Hence this petition

3 After the exchange of affidavits we heard Sri R N Singh Sri A N Tripathi and the learned Standing Counsel and were deciding the petition on merits at the admission stage

4 Sri R. N. Singh learned counsel for petitioner is certainly right when he says that no dispute was decided by this Court in the judgment dt. 17th Nov. 1983 vide Annexure I. As a matter of fact what was held was that there was no dispute before the District Inspector of Schools regarding the validity of election held on 31st Jan. 1982 at the time he recognised the new management committee. Thus the Deputy Director of Education was wrong in refusing to decide the dispute on the ground that the matter has been decided by the High Court.

5 We however find substance in the contention of Sri A. N. Tripathi learned counsel for respondent 3. He contended that the District Inspector of Schools, Ballia could refer only a dispute under u/s. 16A(7) to the Deputy Director of Education and unless there was such a dispute no reference could be made to the Deputy Director of Education. He therefore submitted that as there was no dispute which could be referred to the Deputy Director of Education we should not accept the petitioner's prayer that the Deputy Director of Education should be called upon to decide the dispute.

6 Section 16A(7) of the Intermediate Education Act provides as below:

Whenever there is dispute with respect to the Management of an institution persons found by the Regional Deputy Director of Education upon such enquiry as is deemed fit to be in actual control of its affairs may for purposes of this Act be recognised to constitute the Committee of Management of such institution until a Court of competent jurisdiction directs otherwise.

Provided that the Regional Deputy Director of Education shall before making an order under this sub section afford reasonable opportunity to the rival claimants to make representations in writing.

7 Sri A. N. Tripathi placed reliance on the case of Digambar Jain High School Association, Baraut, District Meerut v. Chancellor Meerut University, Meerut 1983 UP LBI C 438 (1983 All LJ 1285).

8 Statute 13.34 of the Statutes applicable to the Meerut University was considered. It provides as below:

13.34 Whenever there is a dispute regarding the management of an affiliated college persons found by the Vice Chancellor to be in actual possession and control of the college properties may for purposes of the Act and these statutes be recognised to constitute the Management of such college until a court of competent jurisdiction orders otherwise.

Provided that the Vice Chancellor shall before making an order under this Statute afford an opportunity to the rival claimants to make written representations.

Explanation – In determining the question as to who is in actual possession and control of the college properties the Vice Chancellor shall have regard to the control over the funds of the institution and over the actual administration the receipt of the income from the property of the institution and to other relevant circumstances which might have bearing on the question to be determined.

9 It was held that on a reading of the Statute it is evident that the Statute applies to disputes between two managements. The proviso in this regard is very straightforward. It clearly lays down that the Vice Chancellor before making an order under the Statute shall afford an opportunity to rival claimants to make representations. The rival claimants here contemplates the Management committee which asserts that actually it is that Management Committee which should be the management committee of the College. In the case cited there was only a management committee and it was held that the question of applicability of statute 13.34 did not arise.

10 The provisions of Statute 13.34 of the Meerut University are similar to the provisions of S. 16A(7) of the Intermediate Education Act and we are of the opinion that the case of Digambar Jain High School Association (1983 All LJ 1285) (supra) is applicable to the present case. We respectfully agree with the said decision and hold that before a dispute can be referred to the Deputy Director of Education under S. 16A(7) of the Intermediate Education Act there should be two rival management committees.

11 The term of the Management Committee elected on 13th February 1979 came to an end on the election of a new Management Committee on 30th May 1982

The District Inspector of Schools recognised the new Management Committee. Writ petition No. 7882 of 1983 filed by the petitioner against the said order has been dismissed. On 1.12.83 District Inspector of Schools again recognised the new Management Committee. There is no other management committee in existence. In the representations made by the petitioner after the dismissal of writ petition No. 7482 of 1983 vide Annexures III B and III B he challenged the validity of elections held on 30th May 1982. In para 27 of Annexure III B he also claimed to be in actual control of the management of the institution. No such averment has been made in the Writ petition. In view of the recognition of the new Management Committee by the District Inspector of Schools soon after the election on 30th May 1982 and again on 1.12.83 vide Annexure II, the petitioner could not reasonably claim to be in actual control of the management of the institution. If the petitioner wanted to challenge the validity of the election held on 30th May 1982 he ought to have filed a regular civil suit. The scope of enquiry under S. 16A(7) of the Intermediate Education Act is rather limited. The Deputy Director of Education has to decide on the basis of actual control. He may incidentally consider the validity of rival elections said to have been held after the expiry of the term of the earlier management committee. For determining as to which of the two rival management committees is in actual control of the management of the institution the Deputy Director has to consider the control over the funds, the control over the day to day administration, the disbursement of salaries, the receipt of income from the property of the institution, the receipt of Government aid and other matters which may throw light on actual control. His jurisdiction however arises when there are two rival Management Committees claiming control over the management of the institution. The averments in the writ petition do not show that the Committee of which the petitioner was the manager continues in actual control of the management of the institution. There is as such no dispute which could be referred to or decided by the Deputy Director. The mere fact that the District Inspector of Schools made a reference to the Deputy Director would not confer any jurisdiction on the latter.

12 The impugned order dt. 1.12.83 Annexure II is a consequential order passed after the dismissal of writ petition No. 7882 of 1983 in which the order of the District Inspector of Schools recognising the Management Committee elected on 30th May 1983 was challenged. After the filing of the writ petition the order had been suspended vide letters dt. 12.5.83 and 25.5.83. The consequential order passed by the District Inspector of Schools does not give a fresh cause of action to the petitioner to reagitate the matter and the decision in the earlier writ petition is binding on the parties.

13 As there is no dispute between two rival management committees which can be decided by the Deputy Director of Education the petitioner is not entitled to a mandamus as prayed.

14 Impugned order dt. 21.1.84 Annexure II is also a consequential order and does not call for any interference.

15 The petition fails and is dismissed with costs.

Petition dismissed.

1986 ALL. L. J. 109

OM PRAKASH, J.

Smt. Basanti Devi (deceased by LRs) and others, Appellants v. Bal Kishan Pandey and another, Respondents.

Second Appeal No. 275 of 1975. D/ 27.9.1985.*

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S. 29(2) — Word "building" occurring in S. 29(2) — Means a unit and not a portion of big unit/building — Building destroyed wholly — Tenants cannot be permitted to reconstruct their portions of tenancy.

The word "building" occurring in S. 29(2) means a unit and not a portion of a big unit/building. S. 29(2) has to be construed in

*Against judgment and decree of D. N. Shukla, Ist Addl. Dist. Judge, Kumaun Camp Almora. D/ 30-10-1974.

such a manner as not to render the rights of the tenants infructuous or ineffective or at the same time not to cause any hardship or injustice to the landlords. When S. 29(2) is harmoniously construed it will follow that the tenants will have a right to reconstruct only if the building under tenancy constituted a separate unit by itself which could be reconstructed when destroyed by the reasons envisaged by S. 29(2). In that situation the tenant may reconstruct the entire unit without depending on the landlord. If the whole of the building which has been let out to a tenant is destroyed by any of the reasons mentioned in sub-sec. (2) of S. 29 the tenant would certainly have a right to construct the building, but where a portion of the building alone was let out the tenants cannot have a right to reconstruct their portions of tenancy. 1978 All LJ 1251 Foll. (Para 9)

Cases Referred	Chronological Paras
1978 All LJ 1251 1978 All Rent Cas 491	3
AIR 1977 SC 836	3

Radhe Shyam for Appellants. M. M. Pant for Respondents.

JUDGMENT — This is a second appeal filed by the plaintiffs who were the owners of a building against the judgment and decree of learned I Additional District Judge, dated 30-10-1974 affirming the judgment and decree of the learned Munsif Aliganj dismissing the suit of the plaintiffs that the defendants be restrained from interfering with the reconstruction of the building in a part of which the defendants were tenants. The question for determination centres round the interpretation of section 29(2) of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act 1972 (for short the Act 1972). The facts are that the plaintiffs were the owners of the building known as Manullah Building situated in Kirkhana Bazar Aliganj. There were two shops in the said building besides other accommodation of one of the shops defendant No. 1 was a tenant and in the other shop defendant No. 2 was a tenant. In the night of 2-4-1973 the entire building belonging to the plaintiffs was gutted in fire. The plaintiffs obtained permission from the Municipal Board to reconstruct the building but the defendants caused obstruction. The defendants asserted that they were entitled to re-erect the shop under section 29(2) of the Act 1972.

2. Both the trial court and the appellate court accepted the case of the defendants that they were entitled to re-erect the portions of their tenancy under section 29(2) of the Act. The case of the plaintiffs is that section 29(2) of the Act 1972 will apply only when the entire building under tenancy constituting a unit is destroyed by virtue of the reasons as stated in sub-section (2) of section 29 but if tenancy relates only to a part of the building which is a whole was destroyed by the reasons given in sub-section (2) of section 29 then section 29(2) will not confer any right on the tenants to rebuild their portions of tenancy only.

3. So the question for consideration is whether on the proper construction of sub-section (2) of Section 29 the defendants who were tenants of the two shops will be entitled to reconstruct the portions of their tenancy under section 29(2). The learned appellate court in short took the view that the definition of building, has been given in the Act 1972 itself meaning, a residential or non residential roofed structure and that the two shops let out to the defendants being roofed structure constituted building under the Act 1972 and therefore they were entitled to reconstruct the same under section 29(2). In my opinion the view taken by the authorities below is not correct. If the tenants are permitted to reconstruct the portions of tenancy in a much larger building, then it will not only cause a great hardship to the owners of the building, but that will greatly handicap the tenants also in matter of having the right to reconstruct their portions of tenancy. The question is whether the word building occurring in section 29(2) of the Act 1972 refers to a unit by itself or to a portion of a big unit building. The contention of the plaintiffs is that the word building occurring in Section 29(2) means a unit and not a portion of a big unit building. I find substance in the submission of the plaintiffs. The expression any building under tenancy occurring in sub-section (2) of Section 29 if properly construed may refer to a unit and not to a portion of a unit. If the building under tenancy is a unit by itself and if it is partly or wholly destroyed by any reason given in sub-section (2) of Section 29 then only a tenant

will have a right to reconstruct the same under section 29(2) of the Act 1972 If the defendants are permitted to reconstruct only their portions of tenancy then the question arises as to how the rest of the building will be completed It one has a little idea of the masonry work then it will be seen that a sound construction cannot be made in piecemeal and whole structure has to go together Though there is no impossibility in raising a much larger building in piecemeal but constructing a building bit by bit will surely weaken the structure and that will not provide the same strength which would have been there if the whole project is taken up together The strength of the building is greatly affected by disjointed foundation walls or roof which is inevitable if the entire building is not constructed at one point of time but if taken up in different stages If the tenants construct their portion of tenancy separately and if the rest of the building is completed by the landlords at some other stage then the construction of the building will not be so strong as it would have been if the entire construction had been taken up together The legislature would not have contemplated anything against the interest of the landlords by making a provision that the tenants will be permitted even to construct portions of their tenancy leaving the rest to be completed by the owner of the building This view finds support by another reason also Suppose a tenant was a tenant of the second floor and if it is accepted that under section 29(2) a tenant is entitled to reconstruct a portion of the building then the question will arise how such a right assumed to have been conferred on the tenant will be materialised Unless the ground floor or first floor are completed by the landlord the tenant will not be able to rebuild his second floor and the right so assumed to have been conferred on the tenant could not be materialised So section 29(2) has to be construed in such a manner as to not render the rights of the tenants infructuous or ineffective or at the same time not cause any hardship or injustice to the landlords When Section 29(2) is harmoniously construed it will follow that the tenants will have a right to reconstruct only if the building under tenancy constituted a separate unit by itself which could be reconstructed when destroyed by the reasons evisaged by section 29(2) In that situation the tenant may reconstruct the entire unit without depending on the landlord This question has come earlier also before this Court and then in the case of Haji Mumtaz Husain v 3rd Addl District Judge Nainital 1978 All Rent Cas 491 (1978 All LJ 1251) this Court interpreted section 29(2) after reproducing the material portion thereof that if the whole of the building which has been let out to a tenant is destroyed by any of the reasons mentioned in sub-section (2) of section 29 the tenant would certainly have a right to construct the building but where a portion of the building alone was let out, the tenant cannot have a right to reconstruct I wholly agree with the view taken in the said decision and hold that the view taken by the courts below of section 29(2) is wholly untenable in law The learned counsel for the respondents relied on the case of Mohamed Shafi v VII Addl District and Sessions Judge Allahabad AIR 1977 SC 836 Relying on this he submits that under section 29(2) the word building does not mean a unit but that refers to a portion of the unit as well The authority which is relied on does not support his contention The Supreme Court interpreted the word building as occurring in Explanation IV to section 21(1) of the Act 1972 The Explanation IV raised a presumption regarding the bona fide need of the landlord and that was in the following words —

IV the fact that the building under tenancy is a part of a building the remaining part whereof is in the occupation of the landlord for residential purpose shall be conclusive to prove that the building is bona fide required by the landlord

Interpreting Explanation IV the Supreme Court observed in para 7 on page 841 as follows —

To determine the applicability of the Explanation the question to be asked would be whether the accommodation under tenancy and the accommodation in the occupation of the landlord together constitute one unit of accommodation' The object of the Legislature clearly was that where there is a single unit of accommodation of which a part has been let out to a tenant the landlord who is in occupation of the remaining part should be entitled to recover possession of the part let out to the tenant It could never have been

intended by the Legislature that where a superstructure consists of two independent and separate units of accommodation one of which is let out to a tenant and the other is in the occupation of the landlord the landlord should without any proof of bona fide requirement be entitled to recover possession of the tenament let out to the tenant

So the view taken by the Supreme Court was that the presumption arising from Explanation (iv) in favour of the landlord can be availed of only when the tenant occupied a portion of the building which constituted a unit and the other portion of which was in occupation of the landlord and that the presumption will not arise if the portion occupied by the landlord constitutes a separate unit in contra distinction to the unit occupied by the tenant This authority has no relevancy on the question that has arisen in the instant case and therefore it seems to have been misplaced by the respondents The plaintiffs having obtained the permission from the Municipal Board to reconstruct the building are entitled to reconstruct the same and the defendants will have no right to interfere with the reconstruction of the building by the plaintiffs On the proper construction of section 29(2) the courts below should have held that the tenants being the tenants only of a portion of the building will have no right to reconstruct their portions of tenancy under section 79(2) of the Act 1972

4 In the result the appeal is allowed the judgment and decree of the courts below are set aside and the suit of the plaintiffs for permanent injunction restraining the defendants from interfering with the reconstruction of the building by the plaintiffs is decreed with costs

Appeal allowed

1986 ALJ J 112

(LUCKNOW BENCH)

K N GOYAL AND
R C DEO SHARMA JJ

State of U P Petitioner v Mrs Prakash Murthy and another Respondents

Writ Petn No 5243 of 1982 D/ 30-4-1984

(A) Urban Land (Ceiling and Regulation) Act, (33 of 1976), Ss 3, 4 — Excess vacant land — Computation of — It is improper to bind parties to its pleadings while determining excess land (Constitution of India, Art 39(b), (c))

The Act is a legislation designed to ensure social justice in pursuance of the directive principles laid down in Art 39(b) and (c) of the Constitution From the point of view of the individual land owner it is an expropriatory legislation while from the point of view of the general public it is a legislation meant to help the weaker section The Court therefore should strike a golden mean and see that nothing more is taken away from the individual citizen than is really required to be taken away and also that nothing less is taken away from him for redistribution etc than is required to be taken away Therefore in determining the extent of vacant land in excess of the ceiling limit it is not proper for the court to bind down either party to its pleadings or to its failure to raise objections in proper forum or at the appropriate stage (Para 7)

(B) Urban Land (Ceiling and Regulation) Act (33 of 1976), Ss. 4, 2(g) — Appurtenant land — Determination of — It should be separately allowed for servants' quarters — Number of servants living in one building, immaterial

Where while computing the appurtenant land the Court treated even the quarters situated in one building block as separate quarters on the ground that different servants or different persons were living therein it was not proper It should not consider how many families are actually living in a building Even in the main building there may be more than one family living but it would not follow that appurtenant land is separately to be allowed

KB/AC/F436/84/AAJ

for each such residential unit Likewise assuming that appurtenant land is to be allowed for servants quarters then the number of servants living in one building would be immaterial (Para 14)

(C) Urban Land (Ceiling and Regulation) Act (33 of 1976), S 36(1) — Guidelines issued under — Binding effect of

In pursuance of power u/s 36(1) the Central Govt has issued various guidelines These have been issued in order to ensure uniformity in implementation of the provisions of the Act A citizen can take advantage of these guidelines though the State Govt may not in case a citizen questions the same on the ground that the guidelines are contrary to the provisions of the Act If the guidelines go in favour of the citizen it will not be open to the authorities to ignore the same AIR 1972 SC 524 Rel on (Para 12)

Cases Referred Chronological Paras

1983 All LJ 1261 (1983) 4 SCC 110 AIR 1983 SC 1303 4
1978 All LJ 1222 4 9
AIR 1972 SC 524 82 ITR 913 1972 Tax LR 246 13

Chief Standing Counsel for Petitioner Ashish N Trivedi and Rajiv Sharma for Respondents

K. N GOYAL, J — This writ petition arises out of proceedings for declaration of surplus land under the Urban Land (Ceiling and Regulation) Act 1976

2 The respondent Mrs Rakesh Murthy holds a Bungalow No 31 Butlerganj Lucknow On a notice being issued to her under the said Act she filed an objection in which a plea was taken that she was merely a licensee and not an owner and as such there was no question of any surplus land being held by her On facts also it was pleaded that the area of the land mentioned in the notice was not correct and further that there were three dwelling units and not one on the land. Ultimately the competent authority found that the correct area was 8290 sq metres out of which she was entitled to the benefit of 6545 and odd sq metres and declared 1745 and odd sq mts as excess vacant land Against this declaration the respondent filed an appeal before the learned District Judge In the memorandum of appeal which is Annexure No C 1 to the counter affidavit again the same legal pleas were taken and it was urged that nothing should have been declared as surplus land

3 When the appeal came up for hearing before the learned District Judge the only point pressed was that the competent authority had wrongly allowed the benefit of only two servants quarters whereas actually there were 11 servants quarters and for each of them the respondent was entitled to have 500 sq metres as additional appurtenant land This plea was not specifically taken in the ground of appeal but was nevertheless entertained by the learned District Judge who thereupon issued a commission to an Advocate The Advocate commissioner gave a report on 4 1 1982 in which he said that there were five servants quarters Against this report the respondent filed an objection and thereupon the Advocate commissioner was sent again and this time he stated that actually there were seven servants quarters This was accepted by the learned District Judge and accordingly the appeal was allowed and it was held that there was no surplus land at all Aggrieved by this decision the State has filed this writ petition

4 The writ petition came up for hearing before a learned single Judge (Hon ble S S Ahmad J) The question on which the learned single Judge was addressed was whether appurtenant land is to be separately allowed for servants quarters On behalf of the respondent reliance was placed on State of U P v L J Johnson 1978 All LJ 1222 at P 1224 in which it was observed inter alia as follows —

> Even if the dwelling unit is in the nature of a servant quarter or outhouses land appurtenant to it shall have to be left apart from the land appurtenant to the main building

On behalf of the State it was pointed out that the said decision in Johnson s case has been reversed by Hon ble the Supreme Court in State of U P v L J Johnson (1983) 4 SCC 110 (1983 All LJ 1261) The learned single Judge was of the opinion that the question whether the decision of the Division Bench of this Court in Johnson s case stands completely

overruled by the Supreme Court decision or not requires the attention of another Division Bench. It was in these circumstances that this case has been referred to a Division Bench and has come up before us.

5. We have heard learned Counsel for the parties.

6. Learned standing counsel Sri H. N. Tilhari has pointed out that the respondent herself in her objection had never raised the plea that there were several servants quarters. All that was said in her objection was that there were three dwelling units. The competent authority itself allowed appurtenant land for the main building as well as for a Guest House as well as for two servants quarters i.e. 4 dwelling units including the main building. This was itself more than what was claimed in the respondent's objection in which only three dwelling units were mentioned. In the memorandum of appeal nothing was said about the number of dwelling units or of servants quarters. As against this learned counsel for the respondent Sri V. B. Upadhy has pointed out that it was not urged on behalf of the State before the District Judge that a commission need not in view of the pleadings be issued for ascertaining the number of servants quarters. No objection was raised on behalf of the State against the Commissioner's report.

7. It is obvious that the conduct of the case on behalf of both the parties before the competent authority and before the appellate authority was far from satisfactory. This is, however, not a civil suit and we do not think it proper to rest the decision in a matter like this on the basis of technicalities as raised before us on both sides. We are dealing with a legislation designed to ensure social justice in pursuance of the directive principles laid down in Art. 39(b) and (c) of the Constitution. From the point of view of the individual land owner it is an expropriatory legislation while from the point of view of the general public it is a legislation meant to help the weaker sections. We have therefore to strike a golden mean and to see that nothing more is taken away from the individual citizen than is really required to be taken away and also that nothing less is taken away from him for re-distribution etc. than is required to be taken away. We are therefore of the opinion that it will not be proper to bind down either party to its pleadings or to its failure to raise objections in proper forum or at the appropriate stage as urged before us. The factual position is really far from clear. Even if the objector claimed less than she could have objected then she need not be denied the benefit of the law nor the State be bound down to its failure to raise objections against the Commissioner's report on the appointment of the Commissioner.

8. The factual position is not very clear before us. It seems that the Commissioner and the learned District Judge have treated even the quarters situated in one building block as separate quarters on the ground that different servants or different persons were living therein. We are not to consider how many families are actually living in a building. Even in the main building there may be more than one families living, but it would not follow that appurtenant land is separately to be allowed for each such residential unit. Likewise, assuming that appurtenant land is to be allowed for servants quarters, then the number of servants living in one building would be immaterial. What is to be seen is the number of independent buildings detached from the main building.

9. On the question whether any allowance has to be made at all for servants quarters the learned Division Bench in Johnson's case (1978 AIR LJ 1222) (supra) did make an observation as quoted above, although the said observation was made without any discussion. The Hon'ble Supreme Court in its judgment on appeal has not dealt with the extent or otherwise of the servants quarters or with the question whether any separate allowance is to be given or not for servants quarters. It is therefore open to us to decide the matter untrammelled by authority.

10. S. 36(1) of the Act lays down that the Central Government may give such directions to any State Government as may appear to the Central Government to be necessary for carrying into execution in the State any of the provisions of this Act or of any rule made thereunder. In pursuance of this power the Central Government has in fact issued various guidelines. The guidelines have been issued in order to ensure uniformity in implementation of the provisions of the Act. Amongst the guidelines issued one is as follows —

(18) Section 2(g) of the Urban Land (Ceiling and Regulation) Act 1976 land appurtenant for servant quarters/outhouses

1 Enquiries are being made as to whether a servant's quarter or an outhouse situated separately on another building or buildings in the same plot of land where the main residential building is situated is entitled to separate land appurtenant in accordance with section 2(g) of the Act

2 The matter has been considered in consultation with the Ministry of Law (Department of Legal Affairs) It will be seen that as per provisions contained in sec 2(g) of the Act any building constructed before the appointed day with a dwelling unit therein is entitled to an additional extent of 500 sq meters of land Therefore any building constructed before the appointed day which contains a dwelling unit (or more dwelling units) whether it is in the nature of a servant quarter or outhouse even if it is situated in the same plot of land as the main building is entitled to the additional extent of 500 sq meters of land If there are more buildings constructed before the appointed day each building containing a dwelling unit (or more dwelling units) then every such building is entitled to the Additional extent of 500 sq meters of land If a building contains more than one dwelling unit then it is entitled only to the additional extent of 500 sq meters of contiguous land

If the building is situated in the same plot of land as the main building but if it does not contain a dwelling unit (as for instance a garage) then it is not entitled to the additional extent of 500 sq meters of land

3 The above clarification may kindly be noted by State Governments for guidance

G I M of W & H Circular Letter No 1/132/76 UCU(vii) dated 12 1 77

(Emphasis supplied)

11 It would appear from the above that the Central Government has taken the view that separate allowance has to be made under S 2(g) of the Act for servants quarters and outhouses According to this guideline also the number of dwelling units in a building is irrelevant

12. The learned single Judge has taken the view that these guidelines do not have statutory force Apparently the attention of the learned Judge was not drawn to the provisions of S 36 of the Act We are of the opinion that these guidelines can be related to S 36 of the Act and as such if they go in favour of the citizen it will not be open to the authorities to ignore the same A citizen can take advantage of the guidelines issued under Section 36 though the State Government may not in case a citizen questions the same on the ground that the guidelines are contrary to the provisions of the Act

13 Under S 119 of the Income tax Act also circulars are issued by the Central Board of Direct Taxes It has been held by the Supreme Court in Ellerman Lines Ltd v Commr of Income tax West Bengal (1971) 82 ITR 913 (AIR 1972 SC 524) that the assessee can take advantage of the circulars which will be binding on the authorities We are of the opinion that the same principle should apply to guideline issued under section 36 of the Urban Land (Ceiling and Regulation) Act 1976

14 Accordingly the respondent cannot be denied the benefit of appurtenant land for a servants quarters However as noted earlier the factual position about the number of buildings comprising servants quarters is not clear It is therefore necessary to remand the matter back to the learned District Judge What will have to be seen is the number of buildings and not the number of independent dwelling units Even one building may have separate independent dwelling units What is required to ascertain is only the number of independent buildings For this purpose even the building plans that must have been submitted by the respondent to the sanctioning authority may have also be looked into and the various maps prepared by the Commissioner will have to be examined minutely from this point of view

15 Accordingly the writ petition is allowed in part and the order of the learned District Judge dated 16-6-1982 (Annexure No 1) is hereby quashed. The case shall go back to the learned District Judge for deciding the appeal afresh in accordance with law as interpreted hereinabove No order is made for costs

Petition partly allowed

1986 ALL. L. J 116

B D AGARWAL J

Mahendra Kumar Khanna Applicant v M/s Delhi Trading Company and another Respondents

Civil Misc Appln No 11182 of 1985 in Civil Revn No 342 of 1983 D/ 6 9 1985

(A) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 39 — Benefit under — Building became ten years old during pendency of revision — Tenant is entitled to avail of benefit of S 39 (Para 2)

(B) Civil P C. (5 of 1908), S. 114 — Review — Scope of — Scope of review is limited — If a conclusion is sought to be arrived at after a detailed probe into statutory provision and the case law despite there being a finding expressly recorded to the contrary, the case could not be claimed to be a case of error apparent on its face and hence review application would be incompetent (Para 5)

(C) Constitution of India, Art 141 — Supreme Court decision — Binding nature of — Subsequent decision explaining earlier decision, by making pointed reference to it, by observing that it was not necessary to deal with a particular question — High Court will not proceed on authority of view in earlier decision ignoring view in subsequent decision which is directly on point (Para 3)

Cases Referred Chronological Paras	
AIR 1985 SC 231 (1985) 1 SCC 275 1984 Cri LJ 1909	4
1984 All LJ 102 AIR 1985 SC 817	2 3 4
1982 All LJ 376 AIR 1982 SC 1230 (2)	3 4
AIR 1976 SC 2547 1976 Lab IC 1647	4
AIR 1974 SC 1596	4
AIR 1969 NSC 186 (1969) 2 SCWR 679)	4
1966 MPLJ 26 1965 J ab LJ 973 (SC)	4

K L Grover for Applicant D P Bahadur for Respondents

ORDER — Contention of the learned counsel in support of this application for review directed against the decision of this court dated 23rd July 1985 in Civil Revision No 342 of 1983 is that in S 39 of the U P Act No XIII of 1972 the words commencement of this Act cannot be equated with the application of the Act The submission thus is per S 1(4) read with the relevant notification made by the State Government this Act was enforced on July 15 1972 S 2(2) purports to application of the Act to buildings in reference to the date of the constructions thereof For the applicant respondent the contention in the revision was that the building in question be taken is constructed on Oct 1 1974 This court held that assuming this to be so since the period of ten years expired during the pendency of the revision and before this case to be heard and decided on July 23 1985 the Act became applicable in this case

2 The point raised for the applicant in review is not res integra In Vineet Kumar v Mangal Sain Wadhera 1984 All LJ 102 (AIR 1985 SC 817) the question raised before the Supreme Court precisely was whether the appellant therein was entitled to the benefit of S 39 of the Act as the building had become ten years old on the date when the revision petition was heard The building has become more than ten years old during the pendency of the litigation in this case and this gives rise to the question as to the applicability of S 39 The question was decided in the affirmative holding that in such case Ss 39/40 are attracted and the tenant is entitled to benefit thereunder provided other conditions laid in these provisions are satisfied This therefore is a clear authority for the proposition that where as in the present case the building becomes ten years old during the pendency of the revision the benefit under Ss 39/40 can be availed by the tenant concerned

3 For the applicant reliance is placed on Om Prakash Gupta v Dig Vijendra Pd Gupta AIR 1982 SC 1230 (2) (1982 AIR J 376 (Para 7)) It is observed in that case no doubt that the commencement of the Act is to be taken with reference to July 15 1972 That case is specifically referred to and explained in para 11 of the decision reported in Vineet Kumar (1984 All LJ 102) (supra) Misra J speaking for the Division Bench in this case also observed in para 14 that in Om Prakash Gupta the building had not become ten years old on the date when the revision petition was heard and therefore in that case it was not at all necessary to deal with the question whether

the appellant would be entitled to the benefit of S 30 I am unable to agree with the learned counsel that despite the earlier decision being thus explained in the subsequent decision of the Supreme Court this Court may proceed on the authority of the earlier via ignoring the view taken on the subject in Vineet Kumar

4 Learned counsel refers to the law of precedent In Matilal v Radhelal AIR 1974 SC 1596 at P 1602 it was pointed out that the decision in 1966 MPLJ 26 (SC) decided by a Bench of four Hon ble Judges the later judgment by a Bench of three Judges reported in AIR 1969 NSC 186 was not brought to the notice Their Lordships preferred to follow the decision in 1966 MPLJ 26 (SC) as that was a decision of a larger Bench and moreover since on principle this commended to their Lordships as having advanced the right view In State of U P v Ramchandra Trivedi AIR 1976 SC 2547 also cited for the applicant it was also stated that even in case where a High Court finds conflict between the views expressed by larger and smaller Benches of the Supreme Court it cannot disregard the views expressed by the higher Benches It may not be overlooked so far as the instant case is concerned that in Vineet Kumar (1984 All LJ 102) a pointed reference was made to the earlier decision recorded in Om Prakash Gupta (1982 All LJ 376) and the same has as well been explained as being inapplicable to the facts because in that earlier case the building had not completed the requisite period since its construction by the time the revision was heard This constitutes the material distinguishing feature in face where of these authorities cited for the applicant can be of no avail to him Recently in Javed Ahmad Abdul Hamid P walar v State of Maharashtra (1985) 1 SCC 275 (AIR 1985 SC 231) the observation made at P 283 (AIR at P 236) (though there was no decision on the point) is The Court sits in Divisions of two and three Judges for the sake of convenience and it may be inappropriate for a Division Bench of three Judges to purport to overrule the decision of a Division Bench of two Judges It may be otherwise where a Full Bench or a Constitution Bench does so The question indeed does not arise in the instant case for as explained above there is no conflict between the decisions in Vineet Kumar (which is directly on point) and Om Prakash Gupta

5 Moreover the scope of review is limited If a conclusion is sought to be arrived at after a detailed probe into statutory provisions and the case law despite there being a finding expressly recorded to the contrary this cannot be claimed to be a case of error apparent on its face The application for review has therefore to fail on this account as well

6 For the above the application is dismissed

Application dismissed

1986 ALL. L J 117

B L YADAV J

Nawal Kishore Lal Petitioner v Deputy Director of Consolidation Varanasi and othe s Respondents

Civil Misc Writ Petn No 6233 of 1975 D/ 12 8 1985

U P Consolidation of Holdings Act (5 of 1954), S 41 -- U P Land Revenue Act (3 of 1901), S 201 -- Consolidation proceedings -- Reference -- Acceptance of -- Restoration application -- Cannot be allowed unless there is any good cause

In respect of certain Khata there was a dispute between A B C The Consolidation Officer by his order dt 24 1 72 rejected claim of R -- son of A The order became final in appeal as well as in revision A reference was sought on the basis of the order of the Consolidation Officer dt 24 1 72 The reference in view of provisions of S 48(3) was accepted by the Deputy Director of Consolidation by the order dt 5-4 73 Against this order R filed a restoration application alleging that he was not served nor he was heard and hence the order may be recalled and the reference may be decided afresh on merits It was also alleged that R made his signature on 12 7 72 on the order sheet under some bona fide mistake but he was made to understand that further proceedings would be stayed and hence he could not appear on 30 3 73 the date fixed for his appearance and he

was presented to appear on 5.4.73 when the reference was ultimately taken up and decided. By the order dt. 20.3.75 the Deputy Director of Consolidation allowed the restoration application.

Held, order allowing restoration application was not justified. Since there was no good cause for non appearance of R. on the date fixed for his appearance as required by Section 20(1) of the U.P. Land Revenue Act which has been made applicable by Section 41 of the Act. In case any party appears it become his responsibility to look after the case on other subsequent date. Unless he was prevented by some sufficient cause from appearing on the subsequent date it cannot be taken as a matter of right that he can appear on any date according to his convenience. As on the date fixed i.e. 12.7.72 he appeared then on subsequent dates also it was his duty to appear or to send some representative to look after the case. (AIR 1977 NOC 310 (All) Rel. on.) (Para 9)

Cases Referred Chronological Paras

AIR 1977 NOC 310 (1977) 3 All LR 571 8

H. C. Kharbhanda for Petitioner; B. C. Kandpal and R. N. Singh, Standing Counsel for Respondents.

ORDER — This petition under Article 226 of the Constitution of India is directed against the order dated 20.3.1975 (Annex. 3 to the petition). By this order the restoration application of respondent No. 4 Ram Pati was allowed and the order dated 5-4-1973 by which the reference was accepted by the Deputy Director of Consolidation was recalled.

2. The facts of the case lie in a very narrow compass and they are these. In respect of Khata No. 12 there was a dispute about share between respondents Nos. 4, 6 and 7. In the basic year Khata No. 12 was recorded in the name of Kuber and Jaganoo sons of Bhaggoo, Dal Singar, Ram Singar and Ram Chandra sons of Ghuraboo. Kuber has died and Ram Pati respondent No. 4 is his son. An objection under section 9 A(2) of the U.P. Consolidation of Holdings Act (for short the Act) was filed by Kuber alleging that the land was acquired by Bhaggoo, the common ancestor of the parties, who has two wives, Smt. Sukhia and Smt. Chunnia. The latter was his first wife and Kuber and Purshottam were born from her, whereas from second wife Smt. Sukhia Jagnuand Banu were born. A complete pedigree has been given in para 3 of the petition. Bhaggoo, the common ancestor of the parties partitioned the property amongst his four sons during his life time. Smt. Sukhia has executed a gift deed in favour of Brij Bhushan who acquired rights as donee but the gift deed was denied by other co-sharers. The share of Dal Singar and Ram Chandra sons of Ghuraboo was, however, not denied by any other co-sharer.

3. The Consolidation Officer by the order dated 24.1.1972 has rejected the claim of Rampati respondent No. 4 and maintained the shares of Dal Singar, Ram Chandra and Ram Singar. Rampati respondent No. 4 filed an appeal which was dismissed by an order dated 11.12.1972. The revision before respondent No. 1 and also civil Misc. Writ Petition No. 78 of 1974 against the order in Revision met the same fate. In this way it is clear that the original dispute between the parties came final by judgment of this court in the writ petition.

4. A reference was sought on the basis of the order of the Consolidation Officer dated 24.1.72 which became final in all respects. The Assistant Settlement Officer has proposed a reference to the Consolidation Officer who in his turn proposed the reference to the Settlement Officer (Consolidation) who referred it to the Deputy Director of Consolidation for being accepted in view of the provisions of section 48(3) of the Act. That reference was accepted by the Deputy Director of Consolidation by the order dated 5-4-1973 and the adjustment chart as proposed was approved. Against the order dated 5.4.73 accepting reference, respondent No. 4 filed a restoration application alleging that he was not served nor he was heard and hence the order may be recalled and the reference may be decided afresh on merits. By the order dated 20.3.75 the Deputy Director of Consolidation allowed the restoration application. This is the impugned order in the present petition.

5. Sri H. C. Kharbanda, the learned counsel for the petitioner has urged that 12.7.

72 was the date shown in the notice for appearance for the respondent No 4 On that date he (respondent No 4) appeared and put his signature on the order sheet and on the right side of the order sheet 30 3 73 was given as the next date for hearing This fact is clear from the observation made in the impugned order itself filed as Annexure 3 to the petition (page 18 of the petition) But on 30-3 73 the reference could not be taken up for hearing However it was ultimately decided and the reference was accepted by an order dated 5-4 73 In the restoration application respondent No 4 alleged that he was not served on 12 7 72 He has made his signature on 12 7 72 on the order sheet under some bona fide mistake and he was given assurance that the other proceedings will be stayed The Deputy Director of Consolidation did not record a finding as to how on 12 7 72 the respondent No 4 has put his signature on the order sheet and how the next date 30-3 73 was indicated to be the date fixed for hearing of the reference It is proved that the respondent has put his signature or thumb impression on 12 7 72 on the order sheet he came to know about the date fixed in the reference and there was no justification to restore the reference Section 41 of the Act makes Chapters IX and X of U P Land Revenue Act 1901 applicable to restoration matters in appeal and revision etc Sri Kharbanda further urged that the Deputy Director of Consolidation has not taken into account that proviso added to Order 9 Rule 13 C P C by the Allahabad High Court or in other words the 2nd proviso to Rule 13 of the Order 9 (added by C P C Amendment Act No 104 of 1976) even thourh in terms the provision of C P C need not apply to consolidation proceedings It was further urged that without recording a finding about good cause or sufficient cause the order dated 5-4 73 cannot be set aside in view of section 41 of the U P Land Revenue Act 1901

6 Learned counsel for the respondents on the other hand has urged that the impugned order was perfectly correct and under some bona fide mistake on 12 7 72 the signature was made by respondent No 4 But he was made to understand that further proceedings would be stayed and hence he could not appear and he was prevented to appear on 5-4 73 when the reference was taken up and decided

7 Having heard the learned counsel for the parties the first point that requires consideration is as to whether the restoration application filed by the contesting respondents could have been allowed and whether there was any good cause for non appearance of the contesting respondents on the date fixed for his appearance as required by Section 201 of the U P Land Revenue Act which has been made applicable by Section 4 of the Act

8 Unless it was proved as a fact that there was any good cause the order passed by the Deputy Director of Consolidation dated 5-4 73 cannot be recalled nor the restoration application can be allowed (See (1977) 3 All LR 571 (AIR 1977 NOC 310) U P State Electricity Board v Mahmood Hasan Khan)

9 Further the amendment in Order 9 Rule 13 C P C by the Allahabad High Court has been considered and the said amendment has now been incorporated in proviso to Order 9 Rule 13 by 1976 amendment Hence just on the ground of irregularity in the service of summons or notices that would have been sent to respondent No 4 the restoration order cannot be set aside unless it was proved that he was prevented by some sufficient cause from appearing on the date fixed Even though the provisions of Proviso to O 9 R 13 C P C may not be made applicable in terms to the consolidation proceedings but the spirit of these provisions has been made applicable

10 The Deputy Director of Consolidation has made observation in his order dated 12 7 72 that Rampati respondent No 4 has made his signature on the order sheet and the other parties to the reference also made their signatures and 30-3 73 was the next date fixed It was thereafter alleged that the file was also taken up on 29 3 73 but ultimately it was decided on 4-4 73 In case respondent No 4 has put his signature on the order sheet dated 12 7 72 it was for him to appear on the next date fixed in his presence i e 30-3 73 On 30 3 73 he could have appeared himself or sent a representative to look after the case In the restoration application it appears that respondent No 4 alleged that since 1-4 73 till 30-4 73 he was out of station and had gone to Varanasi in connection with some treatment Even assuming that this was so in that event also it was the responsibility of respondent

No 4 to have made arrangement for appearance on the date fixed on 5-4 73 The Deputy Director of Consolidation has not considered the restoration application with reference to the appearance of respondent No 4 on 12 7 72 or as to what was the compelling circumstances on account of which respondent No 4 could not appear on the date fixed i e 5 4 73 In case any party appears it becomes his responsibility to look after the case on other subsequent dates Unless he is prevented by some sufficient cause from appearing on the subsequent date it cannot be taken as a matter of right that he can appear on any date according to his convenience In the instant case by the impugned order the right of the petitioner who is a vendee is being affected In case there would have been some dispute about the share of Ram Singar the vendor then there could have been some justification for the claim of respondent No 4 But in the instant case the vendors right are protected and it was never in dispute As on the date fixed i e 12 7 72 respondent No 4 appeared then on subsequent dates also it was his duty to appear or to send some representative to look after the case

11 In view of the facts stated above it is clear that there was no convincing explanation offered by respondent No 4 for his non appearance on 5-4 73 the date on which reference was accepted by the Deputy Director of Consolidation The Deputy Director of Consolidation was accordingly not justified in allowing the restoration application by the impugned order dt 20 3 75 The impugned order accordingly cannot be sustained

12 In view of what has been stated above there was no justification at all to recall the order dated 5 4 73 passed by the Deputy Director of Consolidation

13 The Writ Petition accordingly succeeds and is allowed The order dated 20-3 75 passed by the Dy Director of Consolidation (Annexure 3 to the petition) is hereby quashed Under the circumstances of the case I make no order as to costs

Petition allowed

1986 ALL. L J 120

K N SINGH AND B L YADAV JJ

Shams Iqbal Petitioner v State of U P and others Respondents

Civil Misc Habeas Corpus Petn No 4072 of 1985 D/ 17 9 1985

National Security Act (65 of 1980), Ss. 3(1), 11(1) — Proceedings before Advisory Board — Hearing detenu by Advisory Board is mandatory — Detenu not heard through his friend — Proceedings before Advisory Board get vitiated — Detention in pursuance of report of Advisory Board, illegal

S 11(1) contains specific provision for hearing to the detenu by the Advisory Board and the Advisory Board was to submit its opinion only after hearing the detenu

(Para 10)

Where the detenu had prayed for assistance of his friend to be heard on his behalf as he was not in a position to represent his case being severely beaten by police it was mandatory on the part of the Advisory Board to have taken steps to procure attendance of detenu's friend and hence failure to hear the detenu through his friend vitiated the entire proceedings before the Advisory Board Accordingly the detention of the detenu in pursuance of the report of the Advisory Board became erroneous Case law discussed

(Paras 12 17)

Cases Referred Chronological Paras

AIR 1983 SC 505 1983 Cri LJ 853 5 13 14 16

AIR 1982 SC 710 1982 Cri LJ 340 5 14 15 16

(1969) 1 QB 125 (1968) 2 All ER 545 (1968) 2 WLR 1471 Pett V Greyhound Racing Association Ltd 15

(1972) 287 US 45 77 L ed 158 Powell v Alabama 11

J S Singar for Petitioner D G A for Respondents

YADAV, J — The present Habeas Corpus petition is directed against the detention order dated 23 1-85 passed by the

KC/LC/G259/85/FGD/SNV

District Magistrate Jaunpur under S 3(1) of the National Security Act 1980 (for short the Act)

2 The facts of the case are in a very narrow compass and they are these The petitioner was earlier detained in the year 1982 under S 3(1) of the Act and he filed a Habeas Corpus petition in this Court which was allowed on 20 12 82 Again the petitioner was detained by order dated 23 1 85 under S 3(3) of the Act (Annexure-1 to the petition) and the grounds of detention were given in Annexure-2 to the petition The grounds of detention translated in English are set out below —

(i) You looted a sum of Rs 10 569/ from the box of a petrol pump and a charge under S 392 IPC was framed

(ii) On 26-4 82 at about 1 45 P M at Badlapur Parao P S Kotwali being armed with gun and bomb terrorised the public and attacked the Bus No U T N 6527 and charges framed were under Ss 307/427 I P C and the case is pending

(iii) on 7-6 82 at about 6 00 P M at Marhaum Ka Parao P S Kotwali you along with your friends followed a motor bike and fired at it and a criminal case was pending against you

(iv) On 7-4 83 at about 11 45 A M at Harlal Ka Road you along with your friend armed with rifle and country made pistol etc attacked Uma Shankar and started enquiring from him about Arjun Yadav and a criminal case under Ss 147/452/148/149/504/506 I P C was pending

(v) On 27-4-84 at about 9 00 A M at Machchli Shahr Parao you along with your friends attacked Vinod Kumar Singh and threw a bomb and opened fire from your rifle and a case under section 307 I P C was pending against you

(vi) Similarly on 27 12 84 at about 11 15 A.M at Mohalla Katghara, on the eve of Parliamentary elections you along with your friends snatched away the bundle of ballot papers from the Presiding Officers and after putting the seal on the same illegally inserted the ballot papers inside the ballot box and a case under Section 395 was pending

(vii) On 27 12 84 on the second round of Parliamentary elections at village Muradganj Polling Booth No 168 at about 1 00 P M you along with your friends armed with pistol and bomb hit the Presiding Officer and by force snatched away the ballot papers and after putting the seal on them inserted the same in the ballot box and a criminal case under Sections 395/397 was pending

(viii) On 27 12 84 at the time of Parliamentary elections you along with your friends armed with pistol created a problem for law and order at a number of polling booths and from different polling stations snatched away ballot papers and after putting seal inserted the same into ballot box and on being resisted by the police of P Gora Badshahpur you opened fire along with your friends and a case under Sections 395/397 I P C was pending

(ix) As it was obvious from a report of the Superintendent of Police dated 22 1-85 that you had moved an application for bail and there were sanguine hopes for the bail application being allowed hence keeping in view your criminal antecedents and as you were acting in a manner prejudicial to the maintenance of public order hence it was not safe to keep you outside jail and the order of detention was required

3 The detention order was served on the petitioner The grounds of detention were disclosed to him and in view of S 8 of the Act he was also directed to make representation against the order of detention to the State Government and his case would be referred to the Advisory Board under S 10 of the Act and in case he wants personally to be heard in view of S 11(1) of the Act he should write clearly in his representation and that he should make representation through the Superintendent Jail to the State Government The petitioner made a representation to the Advisory Board on 5 2-85 through the Superintendent Jail Jaunpur Again he made another application (Annexure 32 to the petition) making a prayer that he has been severely beaten by police and he is not in a proper mental condition and he was afraid that he would not be able to represent his case personally in a proper way Consequently he wants that his friend Sri Shyam Naram Lal may be permitted to represent his case before the Advisory Board

4 According to the petitioner's case he was not afforded any opportunity of being heard through Sri Shyam Narain Lal non Advocate friend and the Advisory Board was of the view that there was sufficient cause for his detention being continued for a period of one year. Through the present petition the petition has challenged the order of detention.

5 We have heard Sri J. Sengar learned counsel for the petitioner and Sri C. P. Bhatt learned counsel for the State of U.P. Sri Sengar urged before us that grounds Nos. 1 to 4 were covered by the earlier petition and hence they cannot be considered for the purposes of present petition and the remaining grounds Nos. 5 to 9 do not relate to public order rather they relate to law and order and in connection with these grounds the cases alleged were already pending trial. Hence there was no valid ground for the order of detention. It was further urged that for some grounds (grounds 1 to 4) which were stale were taken into account by the detaining authority. Hence the action of detaining authority was prejudiced by the consideration of irrelevant grounds and the order of detention was vitiated. The petitioner was not afforded opportunity of hearing before the Advisory Board inasmuch as neither Sri Shyam Narain Lal a friend of the petitioner through whom he wanted to be heard was called for nor any opportunity was given. Whereas hearing by Advisory Board was mandatory in view of S. 8(1) of the Act. Reliance was placed on Abdul Jabbar v. State of Rajasthan AIR 1983 SC 505. Sri Bhatt learned counsel for the State on the other hand urged that the petitioner was not denied opportunity of being heard through his friend and the petitioner did not take any steps to summon his friend Sri Shyam Narain Lal on the date fixed before the Advisory Board. He heavily placed reliance on A. K. Roy v. Union of India AIR 1982 SC 710.

6 Having heard learned counsel for the parties we are of the opinion that the arguments as to whether the petitioner was afforded opportunity of being heard before the Advisory Board itself is sufficient for the disposal of the petition and we need not go into other arguments urged on behalf of the petitioner.

7 It was stated in paras 25 and 27 of the petition that the petitioner was not afforded opportunity of being heard through his friend Sri Shyam Narain Lal. In reply to that averment a counter affidavit was filed on behalf of opposite party No. 4 (Advisory Board) and in para 8 of the counter affidavit it was alleged that no legal practitioner was allowed before the Board and the petitioner appeared before the Board and produced records in answer to questions and in some cases friends of detenus were permitted to appear before the Board. But the requests are considered on merits. In the instant case as the detenu himself appeared and was heard hence opportunity was afforded and the petitioner was even asked to adduce additional evidence and inform his next friend but the petitioner refused to produce him before the Board and in case any request was made on behalf of the petitioner for the adjournment of case the Board would have considered the same. Hence there was no denial of opportunity of hearing.

8 In reply to para 8 of the counter affidavit on behalf of the Advisory Board stating that sufficient opportunity was given to the petitioner for being heard before the Advisory Board we denied in rejoinder affidavit filed on behalf of the petitioner. A supplementary rejoinder affidavit was also filed and in para 4 thereof it was alleged on behalf of the petitioner that the contents of para 8 of the affidavit on behalf of the Advisory Board were not correct. The State was represented by Sri C. P. Misra City Magistrate, Jaunpur and the petitioner remained before the Board briefly for a few minutes and was not heard even for a second on merits of the case. The petitioner insisted that he should be heard through Sri Shyam Narain Lal non Advocate friend of the petitioner but his request was turned down.

9 We granted sufficient opportunity to the State to rebut para 4 of the supplementary rejoinder affidavit inasmuch as on 5.8.85 learned counsel appearing for the State prayed for and was granted two weeks time to file a supplementary counter affidavit and the petitioner was directed to file supplementary rejoinder affidavit if he so chose. But no supplementary counter affidavit was filed on behalf of the State. Again on 21.8.85 when the case was listed we observed in the order sheet that the Government Advocate did not file any supplementary counter affidavit as

directed earlier on 5 8 85 by us and the counsel for the State prayed for and was granted ten days time and no more for filing supplementary counter affidavit and the case was directed to be listed on 30 85 When the case was listed thereafter for hearing before us no supplementary counter affidavit was filed on behalf of the State Under these circumstances, even though again a prayer was made for further time but as on 21 8 85 we had granted ten days and no more time for filing the supplementary counter affidavit there was no reason to grant any further time for filing supplementary counter affidavit to the State Hence we had no option but to proceed to decide the petition on the basis of existing affidavits filed by the respective parties

10 S 11(1) of the Act contains specific provision for hearing to the detenu by the Advisory Board and the Advisory Board was to submit its opinion only after hearing the detenu In the instant case while preferring the representation before the Advisory Board the petitioner had already made a prayer that as he was severely beaten by police and was not in a position to represent his case personally hence he may be heard before the Advisory Board through his friend Sri Shyam Naram Lal As it was stated in para 4 of the supplementary rejoinder affidavit filed on behalf of the petitioner that neither the petitioner was heard by the Advisory Board nor his friend Sri Shyam Naram Lal was summoned and his request to summon him was turned down by the Advisory Board and since these allegations remained uncontroverted in spite of time being granted twice to the State hence we have no option but to rely upon the same As the right of hearing to the detenu was a statutory right and the same was denied hence the report submitted by the Advisory Board cannot be said to be legal Right of hearing through a practitioner has been recognised under Art 22 of the Constitution

11 Under the American Constitution the concept was that right to aid of a counsel was of fundamental character as discussed by C Herman Pritchett in his American Constitution IIIrd Edition on page 451 Referring to Powell v Alabama (287 U S 45) it was held as follows —

Even an intelligent and educated lay man has small intelligence in the science of law If charged with a crime he is incapable generally to defend himself whether indictment is good or bad He is unfamiliar with the rules of evidence

Under the circumstances of that case it was held that failure of the trial court to give reasonable time and opportunity to secure counsel was a clear denial of due process and if the counsel was to be engaged it was held that it must be an effective appointment of counsel Similarly at page 452 it was observed as follows —

Whether requested or not, to assign counsel for him is the necessary requisite of due process of law and that duty is not discharged by an appointment at such time or under such circumstances as to preclude the giving of effective aid in the trial and preparation of the case

Hence it was clear that if the opportunity of hearing was being given or a counsel was being provided to a detenu it must be at a time so as to give effective aid in preparation and trial of the case

12 In the instant case it was statutory requirement of S 11 of the Act that the hearing of the petitioner was mandatory in case he desired to be heard and we are of the opinion that if the petitioner wanted personally to be heard there was no occasion for the Advisory Board not to hear the petitioner and that hearing was such comprehensive that it includes hearing through his friend In the instant case the petitioner desired to be heard through Sri Shyam Naram Lal his friend and as he was severely beaten by police and was not in a position to represent his case before the Advisory Board hence it was bounden duty of the Advisory Board to have heard the petitioner through his friend

13 In Abdul Jabbar v State of Rajasthan (AIR 1983 SC 505) (supra) it was held that the right of a detenu to be represented by a friend who in truth and substance is not a legal practitioner cannot be disputed and no reasons were given by the Board why it was denied to the petitioner There was nothing to suggest that the petitioner wanted to be represented by any so called friend who in reality was a

legal practitioner. Even the name of the friend in that case was not clear. The Lordships of the Supreme Court held that the Board could have asked the petitioner to lose by furnishing the name of the friend on or earlier to 5th April 1982 before the commencement of the proceedings and it was held ultimately on page 506 para 13 as follows:

"The procedure followed by the Advisory Board which involves denial of a valuable right to the petitioner unquestionably vitiates the entire proceedings before it and therefore the continued detention of the petitioner from 5.4.82 would be illegal and the same will have to be quashed."

Hence, the detention of the petitioner in pursuance of the report of the Advisory Board became manifestly erroneous.

14. As regards A. K. Roy v. Union of India (AIR 1982 SC 710) (supra) heavily relied upon by learned counsel for the respondents suffice it to state that this case was considered by their Lordships of the Supreme Court in Abdul Jabbar v. State of Rajasthan (AIR 1983 SC 505) (supra) and the observations in the case of A. K. Roy have been quoted at page 505 (para 12) which were as follows:

"Every person whose interests are adversely affected as a result of proceedings which have a serious import is entitled to be heard in those proceedings and be assisted by a friend. A detenu taken straight from his cell to the Board's room may lack ease and composure to present his point of view. He may be tongue-tied, nervous, confused or wanting in intelligence."

15. In Pett v. Greyhound Racing Association (1969) 1 QB 125 as referred to in the case of A. K. Roy v. Union of India (supra) it was held that if justice is to be done he must at least have a help of a friend who can assist him to give coherence to his strange and wandering ideas. Incarceration makes a man and his thoughts disheveled.

16. In view of the observations made in A. K. Roy's case relied upon by the learned counsel for the respondents having been referred to and considered in Abdul Jabbar's case (supra) we are of the considered opinion that there is nothing in A. K. Roy's case which can help learned counsel for the respondents in support of his contention.

17. Considering the facts and circumstances of the case and the mandatory provision of S. 11(1) of the Act we are of the opinion that as the petitioner had prayed for assistance of his friend Sri Shyam Naram Lal to be heard on his behalf, it was mandatory on the part of the Advisory Board to have taken steps to procure the attendance of Sri Shyam Naram Lal as desired by the petitioner. No supplementary counter affidavit has been filed on behalf of the State in spite of time being granted on a number of occasions. Hence we are left with no option but to rely upon the allegations made in para 14 of the supplementary rejoinder affidavit and as the petitioner was not heard through his friend, hence the entire proceedings before the Advisory Board were vitiated. Hearing any person or through next friend is an essence of the fair play and was in compliance of the principles of natural justice.

18. Learned counsel for the respondents submitted at the close of his argument that even if the court finds that petitioner's request for being heard through next friend was rejected incorrectly by the Advisory Board, the matter should go back to the Advisory Board for being heard again. When the procedure followed by the Advisory Board involves denial of a valuable right of the petitioner, the entire proceedings before the Advisory Board become illegal and therefore the continued detention of the petitioner would become illegal and manifestly erroneous and the same will have to be quashed.

19. In view of the facts and circumstances stated hereinbefore, the order detaining the petitioner cannot be sustained.

20. The petition accordingly succeeds and is allowed. The order of detention dated 23.1.85 passed by the District Magistrate, Jaunpur is hereby quashed and the petitioner is directed to be set at liberty forthwith if he is not required to be detained in any other case. We under the circumstances of the case make no order as to costs.

Petition allowed.

1986 A.L.J. 125

V K MEHROTRA J

Chhedi Lal and another Petitioners v The Vth Additional District Judge Kanpur and others Respondents

Civil Misc Writ Petn No 14270 of 1981 D/ 12 9 1985

(A) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 21(1)(a) and Proviso 3 — Release of accommodation — Application for — Landlord earlier converting part of building for business purpose — No bar to maintainability of application

The third proviso to S 21(1) only prohibits that an application for release of accommodation by a landlord under cl (a) of S 21(1) would not be entertained in case of any residential building for occupation for business purpose The said provision did not preclude a landlord from using his own residential accommodation for business purposes as such from before (Para 8)

Where the application for release of accommodation in the tenancy of tenants was for bona fide need of residence only dismissal thereof on ground that the landlords had earlier converted a portion of residential building into a non residential one i e for manufacturing brushes was on irrelevant consideration The authority might have been right in its approach in case release of the accommodation in occupation of the tenants for their residential purposes was sought for using it for manufacturing brushes or other business (Para 8)

(B) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 21(1) — Application for release — Grounds — Impending marriage of son can be valid ground

Necessity for additional accommodation on the ground that a son of the landlords was likely to be married if set up at a time when in the normal course the claim cannot be treated to be far fetched is certainly a consideration which can be invoked for seeking release of accommodation (Para 9)

(C) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 21(1)(a) — Release of accommodation — Size of rooms in occupation of landlord — Relevant consideration (Para 11)

Cases Referred Chronological Paras

1978 (UP) RCC (Suppl) 97 (1979) 1 Rent CJ 126 11

1972 (UP) RCC 644 9

Ashok Khare for Petitioners K N Dwivedi Standing Counsel for Respondents

ORDER — Sri Chhedi Lal and his wife Smt Hira Devi who are petitioners in this writ petition under Art 226 of the Constitution of India are owners of house No 105/326 Chamman Ganj Kanpur They purchased the house on April 15 1962 Some portion of the ground floor and some on the first floor of the building is in occupation of tenants Sarvashri Sarju Baddal and Daulat Ram are three such tenants They are occupying the portions in their tenancy on a monthly rent of about Rs 13/ each

2. According to the petitioners their family consists of 10 members Most of their children are of school going age One son Kishori Lal was nearly 20 years of age in the year 1972 Negotiation for his marriage was going on at that time

3 Finding that the accommodation in their possession was grossly insufficient for their requirements the two petitioners made an application under S 21 of U P Act XIII of 1972 for release of the accommodation in possession of Sarju Baddal and Daulat Ram The application which was made in July 1978 mentioned the circumstances in which the two petitioners were claiming the release of the aforesaid accommodation Amongst other things it was said that having regard to the status of the petitioners and their family it was imperative for them to have a dining room and a drawing room apart from five living rooms and necessary kitchen etc It was also said that Kishori Lal was likely to get married and would be needing a room for himself The application mentioned that most of the rooms were of the size of 12 ft × 12 ft and some of them would have to be converted into bigger rooms to suit the requirements of the petitioners

4 The three tenants contested the prayer

for release made by the petitioners on various grounds, and in particular on the ground that the accommodation in possession of the petitioners was sufficient for their requirements. It was also said that the story about the marriage of Kishori Lal was set up with a view to make out a ground for release.

5. The Prescribed Authority decided the matter on Aug. 21, 1980. It rejected the prayer for release. Annexure 4 to the writ petition is a copy of the order passed by the Prescribed Authority. On appeal by the two petitioners, the appellate authority, namely, the V Additional District Judge, Kanpur, endorsed the decision of the Prescribed Authority by an order of August 11, 1981. Annexure 6 to the writ petition is a copy of the order of the appellate authority.

6. The Prescribed Authority, as also the appellate authority, took the view that the petitioners were not able to establish any bona fide need for the release of the accommodation in the tenancy of the three tenants in their favour. On this principal conclusion, they naturally negatived the claim made by the two petitioners.

7. Sri Ashok Khare, appearing for Chhedi Lal and his wife, has urged that the decisions of both the authorities is vitiated in law for they have not considered the question of bona fide need of the landlords in accordance with law. The submission is that while judging the question of bona fide need of the landlords, these authorities have failed to take relevant considerations into account and have in fact been influenced by irrelevant considerations.

8. A look at the order passed by the Additional District Judge shows that he was influenced largely by the fact that the two petitioners claimed that they had purchased the entire building with a view to provide residential accommodation to themselves yet, they had admitted that in a portion on the ground floor they were carrying on the manufacture of brushes. The learned Judge felt that conversion by the two petitioners of a residential building into a non residential one for manufacturing purposes, was not permitted by the provisions of U.P. Act XIII of 1972. Since admittedly, a part of the accommodation was being used for purposes other than residential, the two applicants have disentitled them lves from seeking release of any other portion for residential purposes. Sri Ashok Khare argues and in my opinion rightly, that this consideration was an irrelevant one, with which the appellate authority should not have been impressed. The argument is that the third proviso to S. 21 of U.P. Act XIII of 1972 only prohibited the application for release of accommodation by a landlord under clause (a) of S. 21(1) would not be entertained in case of any residential building for occupation for business purposes. The said provision did not preclude a landlord from using his own residential accommodation for business purposes as such from before. The argument on the facts of the instant case is sound. The two petitioners have disclosed in the application made by them for release of accommodation in the tenancy of respondent tenants the circumstances in which they came to use some portion of the ground floor accommodation of the building for manufacturing brushes. Having regard to the location of building, and the circumstances mentioned in the application for release, it could not be said that the user by the two petitioners of that portion of the ground floor for manufacturing brushes was violative of any provision of U.P. Act XIII of 1972. The appellate authority may have been right in its approach in case release of the accommodation in occupation of the respondent tenants for their residential purposes was sought for using it for manufacturing brushes or other business. But this is not the case here. It is obvious that the Additional District Judge was impressed by an irrelevant consideration.

9. The discussion made by the learned Judge of the question of bona fide requirement of the applicants is rather cryptic. Largely it recites the case of the parties. It has not expressly dealt with the question of the likely marriage of Kishori Lal. When one turns to the order of the Prescribed Authority, one finds that likely marriage of Kishori Lal has been treated to be a future necessity of the landlords which according to the Prescribed Authority could not be taken into consideration. This approach is not correct in law. Necessity for additional accommodation on the ground that a son of the landlords was likely to be married, if set up at a time when in the normal course the claim cannot be treated to be far fetched, is certainly a

consideration which can be invoked for seeking release of accommodation After all the availability of additional accommodation if necessary on account of an impending marriage is to be thought of and ensured reasonably well in advance of the occurrence of the marriage The case of the petitioners based upon the likely marriage of Kishori Lal could not be thrown out on the ground that it was a need in future which could not be taken into consideration The principle that an event which is likely to take place within a reasonable future should be taken into consideration has been accepted by this Court earlier (See Abhoy Singh v The District Judge 1972 (U.P) RCC 644)

10 The appellate authority has while discussing the question of bona fide need of the landlords observed that

Secondly I find that there are only three adult members in the family of the landlord and the others are minors and school going children He has got three rooms in the first floor alongwith bath room etc and he has got a barsati on the ground floor This accommodation in any way cannot be said to be inadequate or insufficient seeing the position of Kanpur city

11 Sri Ashok Khare has rightly urged that holding the accommodation at the disposal of the landlords to be sufficient on the ground of availability of three rooms on the first floor was improper in law in the instant case where the size of the rooms was very small generally being 12 ft × 12 ft The authorities proceeded the submission ought to have considered the need for additional accommodation in the light also of the size of the rooms which were available to the landlords The submission is well founded for consideration only of the number of rooms irrespective of their size is no consideration of the problem in accordance with law which requires that the accommodation in possession of the landlords should be found to be sufficient for their need having regard to the actual space available to them and its sufficiency Where as in the instant case the rooms are said to be of very small size and further accommodation suited to the needs of the landlords having regard to their status and standard of living is claimed for making the additional accommodation sought fit for use by them non consideration of the size of the rooms vitiates the conclusion of the authority That the size of a room is a relevant consideration cannot be doubted (See Ram Deo v District Judge 1978 (U.P) RCC (Suppl 97)

12 In view of the aforesaid decisions it has become necessary to quash the order of the appellate authority and require it to reconsider the matter in accordance with law

13 In the result the writ petition succeeds The order dated August 11 1980 passed by the learned V Additional District Judge Kanpur in Rent Appeal No 297 of 1980 (Annexure 6 to the writ petition) is quashed The appeal shall be restored to its original number and decided afresh in accordance with law after notice to the parties

14 Since no one has appeared on behalf of the respondents at the hearing I leave the petitioners to bear their own cost

Petition allowed

1986 ALL. L J 127

A S SRIVASTAVA AND S I JAFRI JJ

Babu Ram and others Appellants v The State Respondent

Criminal Appeal No 357 of 1977 D. 20 2 1985

Penal Code (45 of 1860), Ss 299, 300 — Murder — Gunshot injuries alleged to be cause of death — Injury on witnesses and accused not explained by prosecution — Evidence of prosecution also in conflict with medical evidence — Conviction of accused was illegal

Though the prosecution witnesses are highly interested witnesses since they are injured their testimony cannot be brushed aside easily Their statements have to be scrutinised with great care and caution in order to place reliance on their testimony and the injuries on their person do not exclude their presence from the place of the occurrence but mere injuries on their person provide no guarantee that they are telling the truth as their evidence stands in conflict with the medical evidence

This conflict between their evidence and the medical testimony has rendered the veracity of their statements doubtful and even unreliable and cannot be accepted for the conviction of the accused appellant in this case The injuries on some of the accused were not explained by the prosecution and there the prosecution evidence is rendered tainted with doubts and improbabilities

(Paras 29 30)

G C Saxena S S Tewari and K K Srivastava for Appellants D G A for the State

S I JAFRI, J — Babu Ram Devi Dayal and Raj Narain appellants have filed this appeal against the order of conviction and sentences recorded by Sri R P Jain Sessions Judge Etawah by his judgment dated 19 2 1977 Babu Ram appellant was convicted under Section 302 I P C and sentenced to life imprisonment He was further convicted u/s 324 I P C read with Section 34 I P C and sentenced to one year s R I and also under Section 323 read with Section 34 I P C and sentenced to six months R I Devi Dayal and Raj Narain appellants were convicted under Section 302 read with Section 34 I P C and were sentenced to life imprisonment They were also convicted under section 324 I P C read with Section 34 I P C and sentenced to undergo one year s R I Appellant Devi Dayal was further convicted under Section 323 read with Section 34 I P C and sentenced to serve out six months R I Whereas appellant Raj Narain was convicted under Section 323 read with Section 34 I P C but he was sentenced to undergo R I for nine months

2 Along with appellants one Brahmadin was also named as accused in the First Information Report but he died before the commencement of the trial

3 Appellants Babu Ram and Devi Dayal are brothers and they are sons of Bansi Dhar resident of Dhan Wali Police Station Bidhuna District Etawah Appellant Raj Narain is the sister s son of Babu Ram and Devi Dayal Accused Brahma Din is said to be the Khandani of appellants Babu Ram and Devi Dayal

3A It is alleged that one Kali Charan was the brother of accused Brahma Din Kali Charan was issueless The complainant Ramesh Chand and his brother Sri Kishan were residents of village Nandpur but in the year 1968 the aforesaid Kalicharan and his brother Brahma Din brought Sri Kishan P W 7 in their house and kept him with them and also gave him education etc They also executed a gift deed of their land and house in favour of Sri Kishan in his brother and father and ultimately in the year 1972 Kalicharan adopted Sri Kishan as his son and he also deposited Rs 2000/ in the post office at Bidhuna and he made Sri Kishan as the nominee of that amount but subsequently Brahma Din was offended with Sri Kishan and his brother Ramesh Chand

4 Kali Charan breathed his last on 27 12 1974 and Sri Kishan had performed all the ceremonies in connection with his death Brahma Din and Babu Ram appellants wanted that the amount deposited by Kali Charan should be given to Brahma Din and a case was also launched by Sri Kishan for Mandamus against Babu Ram and others Babu Ram also wanted that the case launched for mandamus may be compromised but Sri Kishan and his brother were not well disposed for compromise

5 Sri Kishan and his brother and uncle Mohan Lal kept on residing in the house of Kali Charan in village Dhanwali

6 The case of the prosecution in brief is that on 28 12 1974 at about 7 30 A M Ramesh Chand P W 1 Sri Kishan P W 7 his uncle Mohan Lal and Udhan and Raghunath Singh and Shivnath were warming up at the Alao at the door of Kali Charan and the appellants accompanied by Brahma Din arrived there Appellant Babu Ram was armed with his licenced gun Devi Dayal and Brahma Din possessed Kantas and Raj Narain had lathi in his hand The accused shouted abuses to Sri Kishan and his brother and declared that the matter should be decided that very day Brahma Din instigated and incited his companions to finish them and consequently all the accused started dealing blows to Sri Kishan and others On hearing the noise Smt Shyam Kali mother of Sri Kishan and Ramesh Chand also rushed out of their house Babu Ram opened fire at her as a result of which she stumbled down Ramesh Chand P W 1 his brother Sri Kishan P W 7 his uncle Mohan Lal and his mother Smt Shyam Kali sustained injuries The accused after

causing injuries had run into the house of Babu Ram appellant The occurrence was witnessed by Raghunath Singh Sobaran Singh, Prem Singh Mahendra Pal Singh and others

7 After the occurrence Ramesh Chand P W 1 prepared a report of the occurrence and took it to the police station Bidhuna being four miles away from the village of occurrence and made over his report to the Head Constable at 9 10 A M The Head Constable prepared a chik report on the basis of the written report handed over by Ramesh Chand P W 1 and also registered a case in the general diary of the Police Station under Section 307 IPC against the appellants and Brahma Dm Loknath Singh P W 12 the Station Officer of Police Station Bidhuna was present at the police station when the report Ex Ka 1 was lodged by complainant Ramesh Chand P W 1 at the Police Station He took up the investigation of the case and recorded the statement of Ramesh Chand at the Police station The injured were sent to Bidhuna dispensary where they were medically examined Smt Shyam Kali was referred to district Hospital Etawah from Bidhuna dispensary and there she succumbed to her injuries at 5 05 A M on 31 12 1974 The Investigating Officer recorded the statement of Mohan Lal and Sri Kishan P W 7 in the hospital at Bidhuna However Smt Shyam Kali was not conscious at that time and therefore her statement could not be recorded by the Investigating Officer The Investigating Officer went to the scene of occurrence from Bidhuna dispensary and there he arrested all the three appellants along with Brahma Dm from the house of Babu Ram appellant Loknath Singh also had seized the licensed gun of Baburam from the room of his house prepared the recovery memo Ex Ka 15 He also interrogated Raghunath Singh P W 8 Shivnath Singh and others He found two empty cartridges shots and tikies on the spot and sealed them accordingly and prepared the recovery memo Ex Ka 16 He also found bloodstains on the spot and collected blood smeared and unsmeared earth from the site of occurrence The Investigating Officer also made a report for sending the gun of Baburam and empty cartridges found at the place of occurrence to the Ballastic Expert for examination and report He was transferred on 20-1 1978 (75?) as such the investigation of the case was taken up by S P Shukla Station Officer of police station Bidhuna on 20-2 75 Munna Lal P W 5 converted the case under sections 302 IPC from 307 IPC on 1 1 75 on receiving the information of the death of Smt Shyamkali from P S Kotwali Etawah

8 Doctor K K Yadav P W 3 Medical Officer police Station Bidhuna examined the injuries of Mohan Lal at 10 45 P M and he found the following injuries on his person

1 Lacerated wound 1 ½" × 2/10" × ½" on left eye brow

2 Swelling cum contusion around the left eye area ½" × 1" ½" around the eye

3 According to the Doctor the injuries were simple and were inflicted by means of blunt weapon and appeared to be quite fresh at the time of the medical examination

9 On the same day at 1 P M he also examined Sri Kishan P W 7 and found the following injuries on his person

1 Lacerated wound 6/10" × 3/10" × 2/10 on left side of the scalp 2 ½" above the left ear

2 Swelling around the injury No 1 2" × 1½")

10 According to the opinion of the Doctor the injuries were simple and were caused by some blunt weapon and were quite fresh at the time of the examination

11 Doctor Yadav also examined the injuries of Ramesh Chand P W 1 the same day at 2 27 P M and he found the following injuries on his person

1 Incised wound 2 2/10" × 3/10" × bone deep on right side of the scalp 1" above the right ear

2 Abrasion cum swelling 2" × 2" on right scapular spine

3 Swelling around the right knee joint.

12 According to him all the injuries were simple and were caused by blunt weapon except injury No 1 which was caused by sharp weapon

13 Duration was about 1 ¼ ddays. He also advised X ray in respect of injury No 3

14 Doctor M L Bajpai P W 6 Medical Officer District Hospital Etawah examined

the injuries on the person of Smt Shyam Kali deceased on 28-12 1975 at 1 15 P M and he found the following injuries on her person

1 Lacerated wound with irregular margins 7 5 cm × 4 cm × bone deep on the left side forehead just above left eye brow No blackening or charring present around the wound.

2 Contusion red on the right upper eye lid 3 5cm × 1 5 cm eye normal

15 He could not ascertain the cause of injury No 1 and advised X ray in respect of injury No 1 by way of confirmation as according to him injury No 1 could be caused by means of a fire arm Both the injuries of Smt Shyam Kali were half day old As stated above Smt Shyamkali succumed to her injuries in the district hospital at 5 05 P M on 31 12 1974 and after carrying out of inquest on the dead body of the deceased her corpse was sent to the medical officer for post mortem examination

16 Doctor K S Kapoor conducted autopsy on the dead body of Smt Shyam Kali on 31 12 1974 at 3 30 P M and he found the following antemortem injuries on her person

1 Lacerated wound 2 3/4" × 1½" × bone deep on forehead just above left eye brow frontal bone found fractured and brain matter coming out of wound

2 Abrasion crusted ½" × ½" over left knee below patella

3 Abrasion crusted 1" × ¼" on back of right thumb at base

17 On internal examination the frontal bone was found fractured in triangular pieces and was depressed There was also multiple irregular fracture in the scalp The parietal plate on left side was also fractured However there was neither any wound of exit nor entrance in the cavity Multiple pieces in small of bones were found in the left frontal lobe

18 According to the opinion of the doctor the death was caused due to injury to the brain

19 Doctor R K Mittal D W 2 Medical Officer District Jail Etawah examined the injuries of Brahma Din accused at 10 40 A M on 30-12 1974 and he found the following injuries on his person.

1 Abrasion with scab 3 × 7 cm vertical left side of forehead being 1 cm above left eye brow

2 Abrasion with seal 1 5 cm × 8 cm back of right palm in between knuckles of index and middle fingers

3 Abrasion with scab 2 × 5 cm back right palm being 2 cm behind injury No 2

4 Contusion bluish 2 × 2 cm back left elbow

5 Contusion bluish 4 × 2 cm outer side left forearm being 16 cm left elbow joint

6 Abrasion with scab back proximal part of left middle finger being 0 5 × 5 cms

20 According to the opinion of the Doctor all the injuries were simple in nature and the duration was about two days and the injuries were caused by blunt weapon

21 Appellants denied the charges attributed to them and pleaded that they were implicated in the case due to enmity They also examined two witnesses in their defence namely Roop Kumar Vishwakarma D W 1 and Doctor R K Mittal D W 2

22 We have heard Sri S S Tewari the learned counsel for the appellants and also the learned counsel for the State at a great length and we are of the view that the prosecution has failed to bring home the charges against the appellants beyond an reasonable doubt

23 In support of the prosecution case 12 witnesses in all were examined and out of them Ramesh Chand P W 1 Sri Kishan P W 7 and Raghunath Singh P W 8 were examined as witnesses of the occurrence Sri Radhey Shyam Mishra Ballistic Expert was also examined to establish that the empty cartridge Ex 23 recovered from the spot by the Investigating Officer was the shot which was fired from the licensed gun Ex 1 belonging to Babu Ram appellant He has proved his report Ex Ka 26

24 Ramesh Chand P W 1 and Sri Kishan P W 7 are the sons of Smt Shyam Kali deceased Ramesh Chand stated that on the day of the occurrence at about 7 30 A M appellants and co-accused Brahma Din armed with their respective weapons as stated above came at his house while he was warming up at

the alao (fire place — Edi) at the door of Kalicharan along with Sri Kishan Raghunath and others Brahma Din accused exhorted his companions to kill and consequent to the exhortations the appellants and co accused Brahmadin started assaulting him and others On hearing the noise Mohan Singh Prem Singh Mahendra Pal Singh arrived there and at the same time his Mother Smt Shyam Kali also emerged from inside the house and Baburam then opened fire with his gun and and his brother Sri Kishan and also his uncle Mohan Lal had sustained injuries and the latter the accused had escaped into the house of Babu Ram appellant On hearing the alarm raised by them a number of persons had collected outside the house of Babu Ram and they had encircled the house from outside He further stated that he wrote down a report of the occurrence and proceeded for the Police Station and handed over his report to the Head Constable at the Police Station

25 P W 7 Sri Kishan has corroborated the statement of his brother Ramesh Chand He stated that he was brought by Kalicharan in his house together with his brother and parents and he was adopted by him as his son He further stated that Kalicharan had also deposited Rs 2000/ in the post office at Bidhuna and he had made him his nominee He further stated that when Kalicharan met his ord on 27 12 1974 all the ceremony relating to his death were performed by him but the brother of Kalicharan namely Brahma Din accused wanted himself to get the amount of Rs 2000 00 deposited by Kali Charan Brahma Din was also supported by Babu Ram appellant in this matter and there had also ensued marpit earlier for which he had launched a case against Babu Ram and others He further stated that Baburam appellant and others sent feelers for compromise but he declined to do so Sri Kishan also stated that on account of firing by Baburam appellant he had received gun shot injuries along with his mother his brother Ramesh Chand and uncle Mohan Lal

26 Raghunath P W 8 is a Khandani of Ramesh Chand P W 1 He has also given out statement consistent with the statement of the aforesaid two witnesses

27 The learned counsel for the appellants pointed out that the oral testimony of these witnesses is incompatible with the medical evidence inasmuch as there is a complete absence of gun shot injuries on the person of Smt Shyam Kali Ramesh Chand Sri Kishan and Mohanlal

28 We have given our anxious thought to this aspect of the matter and we are not prepared to believe the prosecution version that the appellant Babu Ram had fired his gun resulting injuries to Ramesh Chand P W 1 Sri Kishan P W 7 Mohan Lal and Smt. Shyam Kali deceased at about 7 30 A M on 28-12 1974 The possibility of the suggestion by the learned defence counsel to the witnesses that the occurrence had taken place early in the morning when it was dark cannot be ruled out

29 It is no doubt true that Ramesh Chand P W 1 and Sri Kishan P W 7 though highly interested witnesses are injured and their testimony cannot be brushed aside easily Their statements have to be scrutinised with great care and caution in order to place reliance on their testimony and the injuries on their person do not exclude their presence from the place of the occurrence but mere injuries on their person provide no guarantee that they are telling the truth as their evidence stands in conflict with the medical evidence This conflict between their evidence and the medical testimony has rendered the veracity of their statements doubtful and even unreliable and cannot be accepted for the conviction of the appellant in this case It appears that these injured witnesses and also Raghunath Singh P W 8 have concealed the truth as the falsity of their version is quite manifest by the absence of gun shot injuries on the person of the injured. Ramesh Chand. Sri Kishan, his uncle Mohan Lal and his mother Smt Shyam Kali deceased. we have given out our anxious considerations to the evidence of these witnesses and we are fully satisfied that these witnesses have given an untruthful account of the occurrence and concealed the truth which has made their evidence unworthy of reliance It was further contended that no independent witness was brought in the witness box though a number of independent persons of the village were alleged to have witnesse the occurrence There appears to be some element of substance in the contention advanced by the defence as there is no

explanation on the record as to why independent witnesses who were mentioned in the F I R were not produced during trial by the prosecution Moreover immediate motive leading to the occurrence is also wanting in the case and it is therefore not understandable as to why all of a sudden the appellants would attack Ramesh Chand and others at the time of the occurrence

30 The defence has examined Doctor K K Mittal D W 2 Medical Officer District Jail Etawah who conducted the medical examination of the injuries on the person of Brahma Din accused According to the Doctor Brahma Din had sustained six injuries on his person which were though simple were inflicted by means of blunt weapon and according to an estimate given out by the Doctor these injuries could be caused to Brahmadin in the morning of 26 2 1974 It was rightly contended by the learned counsel for the appellants that the injuries of accused Brahma Din were not at all explained by the prosecution evidence adduced in this case The evidence of the prosecution witnesses is further falsified by their failure to explain the injuries on the person of Brahma Din accused and therefore the prosecution evidence in this case is rendered tainted with doubts and improbabilities

31 It is no doubt true that Ballastic Expert Radhey Shyam Misra D W 10 opined that the empty cartridges Ex 22 found at the place of occurrence by the Investigating Officer was fired from the gun Ext I belonging to Baburam accused The first Investigating Officer Loknath Singh P W 12 has stated that he had seized the licensed gun Ex I bearing No 2759 belonging to Babu Ram accused from one of the rooms of his house on the day of occurrence He further stated that he had also found two empty cartridges and tikies from the place of occurrence the same day during spot inspection and after preparing the recovery memos he had sent the gun and the two empty cartridges in sealed covers to Police Station Bidhuna from the place of occurrence through constables Mahabir Singh and Kamal Singh who had deposited them in the Malkhana of the Police Station the same day

32 Constable Mahabir had filed affidavit Ex 36 stating that on 28-12 1974 he had accompanied th Station Officer to the place of the occurrence from the Police Station Bidhuna and the Station Officer had entrusted him with five sealed bundles containing gun 2 empty cartridges blood stained earth etc for depositing the same at police station Bidhuna and he had deposited them at the Police Station the same day Munnalla P W 5 Head Constable of P S Bidhuna stated that he had received five sealed bundles on 28 12 1974 sent by the Station Officer from the place of the occurrence through constable Mahabir and he had deposited the same in the Malkhana of the police station Bidhuna and he had also made an entry in the General Diary of the Police Station about the same and a true copy of the said entry is Ex Ka 9 He further stated that on 13-2 75 he had sent two sealed bundles containing gun and empty cartridges to the Ballastic Expert Lucknow for examination and report through Constable Gajadhar He made an entry of the same in the General Diary of the police station and copy of the said entry is Ex Ka 4 He further deposed that on 16-2 75 Constable Mahabir had returned to Police Station Bidhuna with the aforesaid two sealed bundles containing gun and the two empty cartridges after getting them examined by the Ballastic Expert at Lucknow He had deposited the two sealed bundles in the Malkhana of the Police Station and made an entry in the General Diary of the Police Station and copy of the same is Ex Ka 12 He further deposed that on 27 2 1975 the five sealed bundles concerning the case were sent to Sadar Malkhana through Constable Kamal Singh and to this effect a note in the General Diary was made by constable clerk Sushil chand He had identified the signatures of Sushil Chandra on the aforesaid General Diary entry and a true copy of the same is Ex Ka 12 The prosecution has tendered in evidence the affidavit Ex Ka 2 of constable Kamal Singh showing that the constable had taken the five sealed bundles from the Malkhana of Police Station Bidhuna and had deposited them at Sadar Malkhana Etawah the same day The prosecution has further tendered in evidence the affidavit Ex Ka 12 of Ram Sanehi Lal Head Constable Sadar Malkhana Etawah showing that he had received five sealed bundles sent by Police Station Bidhuna on 27 2 1975 through constable Kamal Singh and he had deposited them in the Sadar Malkhana

the same day The affidavit Ex Ka 24 has also been filed to show that constable Gajadhar took two sealed bundles containing gun and cartridges from police station Bidhuna on 13 12 1975 and produced them before the Ballastic Expert at Lucknow for examination and report and he had returned from Lucknow with the two sealed bundles after examination by the Ballastic Expert on 16 2 1975 and he had deposited them in the Malkhana of the Police Station Bidhuna the same day

33 It may be noted that the licensed gun No 2759 Ex 1 belonging to Baburam appellan was taken in possession from his house by the Investigating Officer Loknath Singh P W 12 on 20-12 1974 The same day the Sub Inspector also recovered two empty cartridges from the scene of occurrence and kept the gun and also the two empty cartridges in sealed covers The Investigating Officer had sent the gun and the empty cartridges along with other recoveries from the spot to the Police Station Bidhuna through constable Mahavir Singh who had deposited the same in the Malkhana of the Police Station It is stated that the gun and the two empty cartridges remained lying in the Malkhana till 13 2 1975 when the gun and the two empties in a sealed covers were sent from the Police Station Bidhuna to the Ballistic Expert, at Lucknow for examination and report through constable Gajadhar Constable Gajadhar returned from Lucknow after getting the examination of the weapon and the empties done by the Ballastic Expert Lucknow on 16 2 1975 and deposited the same in the Malkhana of the Police Station Bidhuna Munnalal P W 5 head constable of P S Bidhuna had ultimately sent the gun and the two cartridges and other articles of the case to Sadar Malahan Etawah through constable Kamla Singh on 27 2 1975 and the same were deposited in the Sadar Malkhana Etawah the same day It is therefore absolutely clear that the gun belonging to Babu Ram appellant and the two empty cartridges recovered from the place of occurrence remained lying at the Police Station Bidhuna for about 48 days and were ultimately sent to the Sadar Malkhana Etawah on 27 2 1975 The Investigating Agency did not send the recovered gun and the two empty cartridges to the Sadar Malkhana Etawah from Police Station Bidhuna forthwith in accordance with the provisions contained in the U P Police Regulations This unusual conduct of the Investigating Agency speaks volumes about the tactics adopted by the police and, therefore it is highly doubtful that the two empty cartridges Exts 22 and 23 were really recovered from the place of occurrence by the Investigating Officer The suggestion of the learned counsel for the appellant that the empty cartridge Ex 23 was sent to the Ballastic Expert for examination after it was fired at the Police Station with the gun Ex 1 of the appellant Ram Babu is not without substance The possibility that the Investigating Agency had tampered with the alleged recovered empty cartridges from the place of occurrence by replacing it by firing one live cartridge at the police station by the gun of Babu Ram appellant cannot be ruled out In view of the circumstances as stated above we are not prepared to believe that the empty cartridge Ext 23 was really recovered from the place of occurrence by the Investigating Officer

34 Considering all the facts and circumstances of the case as enumerated above we are fully satisfied that the prosecution has utterly failed to bring home the guilt against the appellants

35 In the result the appeal is allowed, the order of conviction and sentence recorded by the trial court is set aside The appellants are on bail They need not surrender Their bail bonds are discharged

36 The trial court is directed to return the licensed Gun Ex 1 bearing No 2759 to Babu Ram appellant

Appeal allowed

1986 ALL L J 133

I P SINGH J

Dr Alka Jaiswal, Petitioner v Fr I Fernandes and another Respondents

Civil Contempt Petn No 38 of 1985 D/ 4 2 1985

Contempt of Courts Act (70 of 1971), S 10 — Jurisdiction under — Disobedience of order passed by the subordinate Court — Not the High Court but the subordinate Court should

---

EC/JC/C456/85/MRD/RSK

take cognizance of the offence 1985 All LJ 30 Foll. (Civil PC (5 of 1908), O 39, R 2 A)

(Para 9)

Cases Referred Chronological Paras

1985 All LJ 30 8

(1976-77) 81 Cal WN 209 (1977) 1 Cal LJ 85 6

1973 All LJ 180 1973 Cn LJ 1211 5

Prakash Gupta for Petitioner

ORDER — This contempt petition is at admission stage

2 Dr Alka Jaiswal the petitioner has filed this contempt petition against the respondents that they have committed civil contempt by disobeying the order of Munsif West Allahabad dated 19 1 85 passed in Civil Suit No 46 of 1985 which is in following terms

Called out Plaintiff is present Defendants are absent. Issue Notice to O P again fixing 25 1 85 for objection disposal. Meanwhile the status quo may be maintained Urgent expts

3 In my view since the order was passed by the Court of Munsif so disobedience if any has to be proceeded against the respondents under the provisions of O 39 R 2 A C P C and this Court should not take cognizance of the same

4 The learned counsel has argued that S 10 of the Contempt of Courts Act confers jurisdiction, power and authority on this Court in respect of the contempt of Courts subordinate to it. This contention of course cannot be rebutted but as already mentioned above the disobedience if any of any injunction granted or of order made under O 39 R 1 or 2 or the breach of any of the terms of which the injunction was granted or the order was made can also be enforced by the Court granting the injunction or making the order as provided under O 39 R 2 A CPC and if that Court finds the respondents guilty of such disobedience or breach then apart from ordering the property of the person guilty of such disobedience or breach to be attached can also order such person to be detained in the civil prison for a term not exceeding three months

5 The learned counsel for the applicant has argued that when the remedies are open in two forums then it is for the applicant to choose the forum and on this principle the mere fact that the remedy under O 39 R 2 A C P C is open can be no bar to the present application before this Court in exercise of its jurisdiction power and authority under the Contempt of Courts Act In support of this contention he referred to the decision in State v S N Dixit 1973 All LJ 180 1973 ACC 98 In that decision the letter of the officer amounted to libel which is an offence under the Indian Penal Code The argument that the person responsible for libel can be proceeded against under the Indian Penal Code and not under the Contempt of Courts Act for committing contempt of Court was repelled The reason was that the two offences were distinct and the mere fact that the person liable can be proceeded against the libel would not exclude the jurisdiction of the High Court to punish that person for an offence under the Contempt of Courts Act

6 But, in the present case there is only one offence The point in issue is as to whether that contempt should be punished by this Court under the Contempt of Courts Act or it should be left to be punished by the Court of Munsif under the provisions of O 39 R 2 A C P C This question would involve exercise of discretion by this Court There is no doubt that the jurisdiction power and authority to punish the contemner under the Contempt of Courts Act by this Court is discretionary inasmuch as the matter of contempt is between the Court and the contemner and the applicant who moves the application for contempt is only an informer and he had no vested right to get this Court to proceed in the matter To my mind this Court would be exercising a better discretion if the matter of punishing the contempt of Court subordinate to this Court is left to be dealt with by the subordinate Court itself if the law permits that way In this connection reference may be made to the commentaries K J Aiyer s Law of Contempt of Courts 6th Edition 1983 at page 157 which reads as follows —

Section 10 of the Contempt of Courts Act 1971 no doubt invests the High Court with sample powers to take cognizance of such contempt committed with regard to the Courts subordinate to the High Court which in an appropriate case may be exercised But that does not mean that in each and every case of

such an alleged contempt the High Court should exercise such powers allowing the same to be used as a convenient substitute for the specific remedies otherwise provided by law Violation of an order of injunction constituting disobedience to an order of a Court subordinate to the High Court if fulfilled may constitute civil contempt as defined by the Act and the High Court may also be invested with powers to take action for such contempt But civil contempt is by its very nature remedial the primary object being to enforce the order for the benefit of the party in whose favour the order had been made Such being the nature of civil contempt it would be reasonable to think that where the law otherwise specifically provides a remedy for breach of such order as also the means for its enforcement the parties must normally avail of such remedies and the High Court should not encourage by passing such remedies by initiating proceedings under the Contempt of Courts Act (Calcutta Medical Store v Stadmed Pvt Ltd (1976 77) 81 Cal WN 209 at 210

7 Of course in the above observation remedial aspect is given stress but a mere reading of O 39 R 2 A C P C indicates that it speaks of imprisonment to the person guilty of disobedience or breach and that fact introduces punishment aspect also At any rate the above observation lay emphasis on the point that where alternative remedy is specifically provided by law the parties must normally avail themselves of such remedies and the High Court should not encourage by passing such remedies by initiating proceedings under the Act

8 The point in question was also discussed in detail by me in an earlier judgment dated 3 9 84 in Civil Misc Contempt Appln No 263 of 1984 Anis Ahmad Khan v State of U P (Reported in 1985 All LJ 30)

9 In view of above discussion I see no reason to initiate the present contempt proceedings in this Court This contempt petition is therefore dismissed Of course the applicant if so desires may seek her remedy under O 39 R 2 A C P C in the Court below

Petition dismissed

1986 ALL L J 135

H N SETH AND A N VARMA JJ

Kamal Singh Yadav Petitioner v Vice Chancellor Allahabad University Allahabad and another Respondents

Civil Misc Writ Nos 11641 and 11642 of 1985 D/ 17 9 1985

(A) U P State Universities Act (10 of 1973), S 28(3) — Allahabad University Admission Rules (1984), Rr 1, 3 and 22 — Admission to postgraduate studies — Readmission in subsequent session who discontinued in earlier Session — There is no vested right — Students can seek fresh admission — Petitioners wrongly readmitted — Cancellation of admission is legal

Under the Rules there is a complete bar to readmission of a student of any Part I/Previous/First year Class who discontinues his studies after admission It very clearly provides that such a student shall not be eligible for readmission to the class in any subsequent session The petitioners in the instant case were covered under R 2 and were not entitled or even eligible for readmission after they discontinued their studies after admission The petitioners could not claim that they had vested right of the admission as they had already been previously admitted to the class concerned in the previous session though for some reason they had discontinued their studies Such a right is not only not countenanced by the rules but is specifically barred Hence the cancellation of the admission of petitioners who were wrongly admitted subsequently is legal

(Paras 15 17 25 29)

(B) Constitution of India, Art. 226 — U.P State Universities Act (10 of 1973), S 28 — Allahabad University Admission Rules 1984 Rr 1 and 3 — Admission to postgraduate studies — Readmission of candidates who were previously admitted and had dis-continued their studies — Readmission given to petitioners wrongly, cancelled by authorities subsequently — Order of cancellation cannot be quashed by High Court as it would result in perpetuation of illegal order 1978 All LJ 1217 Foll

(Paras 30, 33, 35)

LC/LC/G837/85/MVJ

(C) U.P State Universities Act (10 of 1973), S 66 — Allahabad University Admission Rules, (1984), Rr 1 and 3 — Admission to postgraduate studies — Readmission to students who discontinued in earlier session — Readmission granted illegal — Subsequent cancellation of readmission is legal — Section 66 was not relevant and did not cure illegality — Question of estoppel could not arise. (Evidence Act (1 of 1872) S 115)

(Para 41)

Cases Referred Chronological	Paras
AIR 1981 SC 136	32
1978 All LJ 1217 (1979) 1 SCC 321 AIR 1978 SC 1814	30
AIR 1977 SC 876 (1977) 2 SCC 148 1977 Lab IC 533	28

R R Yadav for Petitioner Standing Counsel for Respondents

A. N VARMA, J — These two petitions are being disposed of by a common judgment as the issues raised therein are substantially identical The petitioners have assailed the legality of orders passed by the Vice Chancellor of Allahabad University cancelling their admission to certain Post Graduate Courses of Study The orders passed by the Vice Chancellor have been communicated to the petitioners by the Registrar of the University on August 24 1985

2 The cancellation of both the petitioners admissions is based on two grounds First that the petitioners have remained on the rolls of the University for more than eight years prior to their readmission which was granted to them contrary to an ordinance of the University which provides that the maximum number of years for which a student may remain on the rolls of the University as a regular student for courses other than Ph D Degree shall be eight years Second that admission was not granted to them by the Director of Admissions who alone was competent to admit students to the Post Graduate Courses of Study The contention of the petitioners is that neither of these two grounds is sustainable in law and in any case as no opportunity was afforded to the petitioners the principles of natural justice were clearly violated rendering the impugned orders completely void and ineffectual in law liable to be quashed by this Court

3 Learned counsel for the respondents put appearance in these petitions when they were presented on admission on August 25 1985 He has also filed counter affidavits in both the petitions Before we deal with the submissions of the learned counsel for the parties we will first briefly set out the relevant facts

4 The petitioner Kamal Singh Yadav was first admitted to the respondent University in B A (Part I) in the academic Session 1972 73 He continued thereafter to prosecute various courses of study from the session 1972 73 up to 1980-81 when he passed LL B (III year) Examination as an ex student On May 21 1981 he was rusticated from the University for a period of two years by the order of the then Vice Chancellor on account of his alleged involvement in some occurrence which took place on February 13 1981 in the Department of Ancient History Culture and Archeology For the year 1981 82 however the petitioner had taken admission for LL M (Part I) Course and had also deposited the annual fee and other annual dues but he did not continue his studies after his admission After a gap of some years Kamal Singh Yadav made an application on July 27 1985 stating that he was admitted to the LL M (Part I) Course for the session 1981 82 but owing to some personal difficulty he neither appeared at the said examination nor could he complete his attendance After stating these facts he requested that he be readmitted to the LL M (Part I) Course for the session 1983-84 so that he might attend classes and appear at the LL M (Part I) Examination as a regular student Kamal Singh Yadav asserts that after making this application he approached the Chairman of the Admissions Committee Sri R K Sinha who told him that he had no authority to grant readmission and that the petitioner may approach the Head of the Department of Law who forwarded the petitioner's application to the Dean of the Faculty of Law who passed an order on July 27 1985 directing the Head of the Department of Law to admit him The same day the Head of the Department made an endorsement on the petitioner's application which reads as follows

egistrar

The Dean has been pleased to admit Shri Kamal Singh Yadav in LL M Ist Year 1983 84 session

Kindly accept the dues for the year from him

5 The Head of the Department also made the following endorsement to the Chairman of the Admission Committee as follows

Sri R K Sinha

As the Dean has admitted Sri Kamal Singh Yadav in LL M (Part I) 1983 84 session issue necessary card to him

6 The petitioner thereafter states that since his case was one of readmission the matter was referred to the Acting Vice-Chancellor Dr T Pati who passed the following order on August 6 1985 —

The Agent

State Bank of India

Allahabad University Branch

University of Allahabad/

Chairman

Admission Committee for LL M

University of Allahabad

The admission fees of Sri Kamal Singh Yadav for admission to the LL M (Part I) class may please be deposited in the Allahabad University Branch of the State Bank of India The necessary certificate of admission may please be issued by the Chairman Admission Committee for LL M University of Allahabad, as desired by the Finance Officer University of Allahabad

Sd T Pati
Acting Vice-Chancellor
University of Allahabad

7 Thereafter it is alleged by the petitioner the Chairman of the Admission Committee Sri R K Sinha calculated the annual dues and other fees of the University and issued the admit card to the petitioner Thereupon the petitioner deposited the fees on 6-8 85 The petitioner further asserts that after readmission he received his identity card from the University and thus became a bona fide student of the same At this point it is important to mention that Dr T Pati immediately after issuing the aforesaid letter/order dated August 6 1985 withdrew his instructions to the State Bank by means of a letter dated August 6 1985 asking it not to allow these two petitioners to deposit the fees as he had after issuing the aforesaid instructions been informed that these two persons might not be genuinely admitted students vide Annexure 6 to the counter affidavit

8 The aforesaid petition Kamal Singh Yadav has asserted that his case was one of readmission and not a fresh admission The Head of the Department of Law was hence competent to readmit him Thus in paragraph 10 of his petition it has been stated It is further submitted that the case of the petitioner is not of admission but it is a case of readmission and therefore it was recommended by the Dean Faculty of Law by the Head of the Department of Law and approved by the Chairman of the Admission Committee It is further submitted that since it is a case of readmission therefore the matter was placed before the Vice Chancellor (Acting Vice Chancellor) who after examining the case of the petitioner directed the Chairman of the Admission Committee for LL M University of Allahabad, namely Sri R K Sinha to issue an admission card to the petitioner and upon issuance of admit card by the Chairman of the Admission Committee the petitioner deposited the requisite fees and other dues calculated by the Chairman of the Admission Committee named above The petitioner further asserts in the petition that as he was once duly admitted in LL M (Part I) for the 1981 82 session he had a vested right to continue and complete his studies in LL M (Part I) Consequently when he was readmitted to that class for the session 1983-84 his admission could not be cancelled by the Vice-Chancellor

9 As regards the petitioner Bhola Nath Singh the position is that he made an application on August 3 1985 stating that he was admitted to the aforesaid class for the session 1981 82 and had also deposited the admission fee etc but for certain reasons he could not get himself enrolled After stating these facts he made a request that he be admitted to the said course so that he might appear at the M A. (Previous) Examination in the subject of Hindi This application was addressed to the Registrar/Head of the Department of Hindi The latter made an

endorsement the same day upon that applicat on to the effect that if the petitioner could be admitted he had no objection Thereupon the Registrar made a note again on August 3 1985 itself for the consideration of the Director Admission Committee to the effec that appropriate orders may be passed on the aforesaid no objection of State of the Head of the Department The Director o Admiss on Committee for dea the applicat on to the Vice Cha cellor for app opriate orders on the application presumably on he ground that it being a case of readmission he could not consider the same Before however he Vice-Chancellor could pass any orders on this application the petitione made a second application on August 6 1985 before the Acting Vice-Chancellor Dr T Pati who was officiating for the Vice Chancellor who happened to be on leave on that date stating that the applicant Bhola Nath Singh had been admitted to the M A (Prev) Class but for some reasons he could not deposit his fees this year and requested the Acting Vice Chancellor to permit him to deposit the fees The petitioner was obviously referring to his admission in that class made in 1981 82 It is significant that the petitioner did not disclose in th s application that he had already submitted his application for his readmission on August 3 1985 The Acting Vice-Chancellor upon this application issued the following letter addressed to the State Bank of India/Chairman Admission Committee M A (Part I) Hindi which reads as follows —

As desired by the Finance Officer University of Allahabad the Chairman Admission Committee M A (Part I) (Hindi) may please issue a certificate of admission for enabling Shri Bhola Nath Singh to deposit his fees in the State Bank of India Allahabad University and enrol himself at the University

Sd. T Pati
Acting Vice Chancellor
University of Allahabad 6-8 85

10 This petitioner too has asserted in the petition that he had a right to be readmitted and having been duly admitted by the orders of the Acting Vice-Chancellor his admissi n could not be legally cancelled by the Vice Chancellor Here again it may be mentioned that Dr T Pati, the Acting Vice-Chancellor had promptly withdrawn the instructions issued to the State Bank of India by means of his letter dated August 6 1985 referred to above The Acting Vice Chancellor had in this letter categorically stated that the petitioners should not be allo ed to deposit their fees as it has been brought to his notice that they might not be genuinely admitted candidates However instead of depositing the fees in the State Bank of India this petitioner deposited fees in the accounts office of the University on August 9 1985 as in the meantime the strike in the accounts office had been called off on August 7 1985

11 In the counter affidavits filed on behalf of the respondents it has been asserted that neither of the two petitioners had any right of readmission to the class in which they had sought readmission on the basis of their previous admission to those classes The respondent University further contends that in any case as the petitioners were seeking admission to the Post Graduate Classes the same could not be granted by any authority other than the Director Admissions Committee It is also the case of the respondent University that both these petitioners had remained on the rolls of the University for more than eight years prior to their readmission and consequently under the Ordinance referred to above the Vice Chancellor as the Chief Executive Officer of the University rightly cancelled their admission

12 Having set out the assertions and counter assertions of the parties we proceed to consider the legal submissions advanced by the learned counsel for the parties In our opinion the first and the basic issue to be considered is whether the petitioners had at all any right to claim readmission on the basis of their previous admission to the classes in which they had once been admitted in the past If this issue is answered against the petitioners we have no doubt that no relief can be granted to them as the right to readmission is the main foundation of the petitioners claim It is apparent that if there is no provision entitling the petitioners to claim readmission their so called admission cannot but held to be completely void and ineffectual in law and this Court in its exercise of jurisdiction under Article 226 of the Constitution would not be justified in quashing

an order the result of which would inevitably be restoration of orders which are non est in law

13 We will therefore first have a look at the relevant statutory provisions The Allahabad University is governed by the U P State Universities Act Admissions to the various courses of study are therefore regulated by the provisions of the Act Section 28 of the Act provides that there shall be an admission committee of the University the constitution of which shall be such as may be provided for in the Ordinance The Admission Committee is one of the authorities of the University (vide Section 19) Sub section (3) of Section 28 provides that the Admission Committee shall lay down the principles or norms governing the policy of admissions to the various courses of study in the University and may also nominate a person or sub-committee as the admitting authority in respect of any course

14 Under Section 28 of the aforesaid Act the Admission Committee of the respondent University has been laying down various rules from time to time On June 25 1984 the Admission Committee made rules for readmission to classes Rule 1 in so far as it is relevant for our purposes provides –

1 A student of any class who fails the Examination concerned or after fulfilling the condition of eligibility for appearing at the Examination concerned fails to appear at the same shall not be eligible for readmission to the class concerned in any subsequent session but may appear at the Examination in a subsequent session as an ex student subject to the Ordinances regulations and rules governing the admission to Examinations of ex student

To this rule there is a proviso which makes an exception in the case of students of various classes who may be re-admitted to the class if they fail at the examination of various courses of study mentioned therein and the proviso indicates that in those cases the applications for readmission has to be submitted to the Head of the Department for consideration However the proviso deals with the subjects or courses of study or examinations other than those in which the petitioners sought readmission and hence the same are not being reproduced here There is then Rule 2 which is the one which governs the cases of the petitioners It provides

2 A student of any Part I/Previous/First Year Class who discontinues his studies after admission or otherwise fails to fulfil the conditions of eligibility for appearing at the Examination concerned shall not be eligible for readmission to the class in any subsequent session

The next relevant rule is Rule 3 which states

3 A student of any Part I/Previous/First Year class governed by rules 1 and 2 and above may apply for admission to the class concerned in a subsequent session as a fresh candidate on the form prescribed and within the time period notified for such application for fresh candidates His application for admission shall be considered along with the applications and in accordance with the rules governing the admission of fresh candidates and he shall not be entitled to any special consideration on the ground that he had been admitted to the class concerned in any previous session

15 It will thus be seen, that under the aforesaid rules there is a complete bar to readmission of a student of any Part I/Previous/First Year Class who discontinues his studies after admission It very clearly provides that such a student shall not be eligible for readmission to the class in any subsequent session It is indisputable that both the petitioners fall within the ambit of Rule 2 They were both students of Part I/Previous Classes the one in the subject of Hindi and the other in the LL M Both of them had discontinued their studies after admission They were hence clearly ineligible for readmission to the class in the subsequent session

16 The above position has been made more explicit by what is stated in Rule 3 quoted above Thus while it permits such students to apply for admission to the aforesaid classes in a subsequent session as a fresh candidate on the prescribed form and within the time period notified for such other fresh candidates, it specifically mandates that their applications for admission shall be considered along with the applications and in accordance with the rules governing the admission of fresh

candidates and that they shall not be entitled to any special consideration on the ground the they had been admitted o the class concerned in any previous session

17 The position which thus emerges from the rules considered above is that the petitioners were not entitled or even eligible for readmission Now as noticed above the clear case of the petitioners is that they had a vested right on readmission because they had already been previously admitted to the class concerned in the previous session though for some reason they had discontinued their studies Such a right is not only not countenanced by the rules but is specifically barred

18. The petitioners have annexed to their petitions copies of their applications for readmission the contents of which have already been set out hereinabove They are simple applications for readmission not containing any particulars which are required to be disclosed for fresh admission and of course they are not in the prescribed form The request for readmission made by the petitioners was made on the sole assertion that they had been admitted to the class concerned in the past in some previous session and on that basis were seeking readmission for which appropriate orders for depositing fees etc might be issued The petitioners applications were neither considered nor processed as applications for fresh admission

19 Fresh applications involve consideration of factors which are altogether different from a simple application for readmission to classes in which readmission is under the rules permissible It implies inter alia, as we shall presently demonstrate with reference to the rules for admission a comparison of relative merits of all the candidates applying for admission

20 Thus the general rules laid down by the Admissions Committee in May 1983 for admission of students to various classes provide that preference will be given to graduates of the current year over graduates of the previous year and that the latter may be considered for admission after discount of their marks in the qualifying examination by 5% of the aggregate secured Rule 11(2) of these Rules provides that the relative merit of candidates for admission shall be determined in the manner laid down therein The first divisioners of the Allahabad University and other Universities are given preference over the second divisioners and the second divisioners over the third divisioners and so on In the case of the admission to LL M Classes also there is a similar rule namely Rule 19 which provides

19 Relative merit of candidates for admission to LL M classes shall be determined in the following order of categories

(a) Law graduates of Allahabad University with 60% marks or above at the LL B Examination

(b) Law graduates of other Universities with 60% marks or above at the LL B Examination

(c) Law graduates of Allahabad University with 55% marks or above at the LL B Examination

21 Likewise in the rules framed by the Admissions Committee on September 22 1983 there are provisions which lay down that candidates shall be admitted to Previous/Part I class of the relevant subject strictly in order of merit as determined by the rules The norms laid down are more or less the same as indicated in the previous rules mentioned above Fresh graduates are given a preference over the graduates of previous years and in the case of the latter certain marks are deducted while computing their aggregate by way of discount

22 It will thus be seen that fresh admissions imply altogether different considerations and criteria The petitioners applications could not hence be treated as applications for fresh admissions and it is for this reason that the Director of Admissions had expressly declined to consider the same

23 Sri R R Yadav learned counsel for Sri Kamal Singh Yadav however placed reliance on Rule 22(b) of the aforesaid rules for admission framed by the Admissions Committee in May 1983 and submitted that under that rule readmission to Part I/Previous classes of students who discontinued their studies in the middle of the session is permissible at the discretion of the Heads of the Department or the Deans concerned and inasmuch as Kamal Singh Yadav had been

admitted by the Head of the Department of Law his readmission could not be cancelled by the Vice Chancellor

24 We are unable to agree In the first place Rule 22 shall have no application as these rules have been replaced by 1984 Rules framed by the Admissions Committee on June 25 1984 mentioned above which deal comprehensively with the entire subject of readmission to classes Secondly Rule 22(b) does not countenance learned counsel s submission Rule 22 in so far as it is relevant provides

22 Readmission of students to classes shall be regulated by the following rules

(a) Students who fail in any class or after completing their attendance fail to appear at the examination due to illness or any other cause will not be readmitted They can appear in the examination next year as ex students or they may join some (or all subjects) as casual students if the Heads of Departments concerned recommend and are willing to take them as casual students

Provided that this rule may be relaxed in specially deserving cases at the discretion of the Head of the Department or the Dean concerned, if there are any vacancies

Provided further that students so admitted shall renounce in writing their right to appear as ex students and shall undertake to be governed by the Ordinances and rules relating to the attendance requirement governing regular students of the University Once readmitted as regular students, they will not be permitted in that session to opt again for appearing as ex students

(b) Students of Part I and Previous classes who discontinue their studies in the middle of the session or students who were detained due to shortage of attendance are not entitled to be readmitted. They will be treated as fresh applicants and can take their chance along with other applicants at the discretion of the Heads of the Departments or the Dean

25 In our opinion clause (b) of Rule 22 does not expressly or by necessary implication provide that the applications for readmission of students of Part I or Previous classes who discontinued their studies in the middle of the session may be considered and allowed as a matter of course without subjecting the same to the process involved in the disposal of applications for fresh admissions The Rule merely provides that such students will be treated as fresh applicants and they may take their chance along with the other applicants only if the Head of the Department or the Dean of the Faculty concerned allows them to do so The rule does not mean such students are entitled to any special considerations and that in their case the authority competent to deal with such applications would be Heads of the Department or the Deans concerned

26 The fresh applications as well as the applications of students who were admitted in the past have all to be considered together by the same authority for it is impossible to conceive that framers of the Rules intended that the fresh applicants and the students of the above category would be dealt with in the matter of admission differently in one case by the Director of the Admissions Committee and in the other by the Head of the Department or the Dean

27 In any case the language of the 1984 Rules quoted above when alone in our opinion would govern the cases of the petitioners is peremptory and unequivocal. It enjoins that such students shall not be eligible for readmission to the class in any subsequent session

28 We, therefore hold that neither of the two petitioners was eligible for readmission to the classes in which they sought admission That being so their admissions were completely void and ineffectual in law The proposition that existence of a right is a condition precedent for invoking jurisdiction under Article 226 of the Constitution is far too well settled to require elaboration Thus in D Nagaraj v State of Karnataka reported in (1977) 2 SCC 148 at page 152 (AIR 1977 SC 876 at P 879) their Lordships of the Supreme Court observed

It is well settled that though Article 226 of the Constitution in terms does not describe the classes of persons entitled to apply thereunder the existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under the said Article "

29 The petitions are hence liable to be

dismissed on this ground alone namely that the petitioners do not have any right of readmission which was the only right which was claimed by them before the respondent authorities

30 It is equally well settled that this Court will not in the exercise of its jurisdiction under Article 226 of the Constitution issue a writ and quash an order the result of which would be perpetuation of a gross and manifest illegality and restoration of an order or state of things which are clearly void and prohibited by statutory provisions We will refer to just one case by way of illustration namely Major Chandra Bhan Singh v Latafat Ullah Khan. 1979 I SCC 321 (1978 All LJ 1217) In this case the petitioner had obtained an administrative review of an order which was not statutorily authorised The aggrieved party got the said order reviewed and cancelled against which the petitioner approached the High Court under Article 226 of the Constitution of India. The High Court allowed the writ petition on the ground that there was no provision for review of the order passed earlier Against this order an appeal was filed before the Supreme Court which was allowed and the order of the High Court set aside Their Lordships of the Supreme Court observed that the High Court was not justified in exercising its extraordinary jurisdiction ignoring the fact that the first order itself obtained by the petitioner was without jurisdiction because as there was no provision for review The position here is exactly similar The petitioners had no right of readmission but were wrongly and illegally readmitted It is not difficult to see that the result of quashing of the impugned order passed by the Vice-Chancellor would be perpetuation of an illegality namely restoration of readmission of the petitioners which is expressly prohibited under the rules of admission That being so we are not persuaded that this is a fit case for interference even if the other contentions of the learned counsel for the petitioners prevail

31 Another ground on which the petition is liable to fail is that their admission was not granted by the Director of the Admissions Committee In one case it was granted by the Head of the Department of Law and, in the other by the Acting Vice-Chancellor Of course the Acting Vice Chancellor had immediately recalled his order as noticed above In the petitions we do not find any specific challenge to the fact that the Director of Admissions Committee alone is the authority competent to grant admissions (as distinct from readmission) What has been contended by the petitioners in their petitions is that there was not a case of admission but of readmission which could be granted either by the Head of the Department or by the Acting Vice Chancellor The Vice Chancellor has specifically asserted in his order that the authority competent to admit Post Graduate students was the Director of Admissions Committee In paragraphs 53 54 and 61 of the counter affidavit filed in the case of Kamal Singh Yadav it has been specifically asserted that the petitioners had not been admitted by the authorities competent to admit them namely the Director of Admissions Committee We have no reason to doubt the correctness of this assertion The admissions of the petitioners were hence rightly cancelled by the Vice Chancellor As admittedly the petitioners were not admitted by the Director of Admissions we are not inclined to interfere with the impugned order on the mere ground that before passing it the petitioners were not given any opportunity

32 Learned counsel for the petitioners however vehemently contended that non observance of principles of natural justice per se renders the impugned orders liable to be quashed even if it is held that the petitioners had no right of readmission or that they had not been admitted by the Director of Admissions In support learned counsel placed reliance on a decision of the Supreme Court in the case of S L Kapoor v Jagmohan reported in AIR 1981 SC 136 We however find that in this very decision their Lordships have observed —

Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference the admitted or indisputable facts speaking for themselves Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible the Court may not issue its writ to compel the observance of natural justice not

because it approves the non observance of natural justice but because Courts do not issue futile writs But it will be a pernicious principle to apply in other situations where conclusions are controversial however slightly and penalties are discretionary

33 Applying the aforesaid dictum we find that in view of the clear legal position that the petitioners are not entitled to readmission and the further fact that the admissions have not been made by the competent authority it would be futile to issue a writ directing the Vice Chancellor to comply with the principles of natural justice No authority is competent to readmit the petitioners Consequently we decline to interfere with the impugned orders in the exercise of our discretionary powers under Article 226 of the Constitution

34 Counsel for the petitioners also submitted that the validity of public orders has to be judged in the light of reasons disclosed therein and that we cannot sustain the impugned orders on a ground not disclosed by the Vice Chancellor in his order namely that the petitioners readmission was void ab initio as there was no provision for their readmission

35 We are not impressed by the above submission It is not that we were sustaining the impugned orders on a ground not disclosed therein We are merely declining to exercise our discretion under Article 226 on a more fundamental ground namely that the petitioners did not have any right of readmission and the existence of a legal right being a pre requisite for the exercise of discretion under Article 226 of the Constitution of India which is lacking in the present case we are not persuaded to exercise our discretionary powers under Article 226 of the Constitution

36 Learned counsel for the petitioners next submitted that the Vice-Chancellor is the Chief Executive Officer of the University and if in the exercise of those powers the Acting Vice Chancellor admitted the petitioners the Vice-Chancellor could not sit in appeal over the order passed by the Acting Vice Chancellor and nullify the action taken pursuant to the order passed by the Vice-Chancellor

37 We cannot accept the argument While it is true that the Vice Chancellor is the principal executive and academic Officer of the University he cannot exercise powers in a manner which is contrary to the provisions of the Act Statutes and Ordinances Further he cannot exercise powers which are specifically vested in other authorities of the University The power of admissions is vested under Section 28 in the Admissions Committee and the admissions have to be made in accordance with the rules framed by that authority As the rules expressly prohibit readmission to classes in which the petitioners sought admission the Acting Vice-Chancellor could not validly direct the readmission of the petitioners

38 Reliance was placed by Sri R R Yadav learned counsel for Kamal Singh Yadav on Section 66 of the Act it was urged that even if there was any illegality in the readmission of the petitioners the same stood cured as a result of that provision

39 We are unable to agree Section 66 merely deals with certain specific situations or defects pertaining to procedure and not to the power of the authorities Section 66 cannot, in our opinion cure invalidity of acts arising from a total lack of power

40 Learned counsel for the petitioners also submitted that the petitioners having been once admitted and allowed to deposit their fees in pursuance of the order passed by the Acting Vice-Chancellor or the Dean or the Head of the Department the respondent University is estopped from cancelling the same

41 The contention is entirely devoid of any merit There can be no estoppel against a statute Further it has not been demonstrated that as a result of any act of any officer or authority of the University the petitioners position has in any way been altered in a manner and to the extent which may sustain a plea of estoppel The readmission of the petitioners (sic) who were not competent to do so In these circumstances the plea of estoppel is wholly unsustainable and must be rejected

42 Learned counsel also submitted that the Vice-Chancellor is guilty of meeting out discriminatory treatment to the petitioners as

there were some others also who were similarly situated whose readmissions have not been cancelled by the Vice-Chancellor

43 We are unable to agree The averments made on the petitioners in this connection are too vague and general to merit any serious consideration Kamal Singh Yadav has alleged that three students mentioned by him have remained on the rolls of the University since 1969 and the Ordinance has not been applied to them by the Vice-Chancellor He had not mentioned the details as regards for how many years these students have been on the rolls as regular students Another allegation is that the cases of the petitioner and Sri Asish Panova are similar but the latter has been readmitted to M Sc (First Year) Maths These allegations have been denied in the counter affidavit in which it is asserted that their cases are not similar It has not been stated by the petitioner as to who admitted Ashish Pandya and whether this fact has been brought to the notice of the Vice-Chancellor In any case the allegations are non specific and cannot constitute a valid ground for inferring discrimination

44 Finally counsel submitted that as no date has been fixed under Section 52(5) of the Act by the Executive Council as to the date with effect from which the Ordinance shall have effect the petitioners admission could not be cancelled on the basis of the Ordinance It was also urged that in any case the petitioners have not yet completed eight years on the rolls of the University as regular students The vires of the Ordinance was also challenged

45 Counsel for the respondent University on the other hand submitted that even if it be assumed that the Executive Council had not specifically fixed any date under Section 52(5) of the Act with effect from which the Ordinance shall have effect the date on which the Executive Council passed the resolution should be taken as the date on which the Ordinance came into force He also contended that both the petitioners had completed eight years in the University as regular students and hence they could not be validly admitted Counsel further maintained that the Ordinance does not violate any provision of the Constitution of India

46 We are refraining from expressing any opinion on these submissions as in our opinion the impugned orders have been passed on the petitioners applications for readmission For the present the controversy was hence confined only to the question whether the petitioners had a right of readmission The petitioners have not yet applied for fresh admission The impugned orders must necessarily be deemed to relate only to the readmission of the petitioners In this view we consider it unnecessary to express any opinion whether the Ordinance has validly come into force or whether the petitioners have already completed eight years in the University These are questions which will be gone into by the authority competent to consider cases of admissions to the classes concerned if and when the petitioners choose to apply for fresh admissions We however make it clear that the competent authority shall consider the various pleas raised by the learned counsel on the applicability and validity of the Ordinance uninfluenced by the observations made by the Vice-Chancellor in the impugned orders in regard to the petitioners

47 In the result both the petitions fail and are dismissed But we make no order as to costs

Petitions Dismissed

1986 ALL L J 144

S D AGARWALA J

M/s M S Bansal Pvt Ltd Kabrakutta Aligarh Petitioner v District Judge Aligarh and another Respondents

Civil Misc Writ Petn No 2906 of 1985 D/ 28 8 1985

Urban Land (Ceiling and Regulation) Act (33 of 1976), Ss 6(1), 8(3), 9 — Ceiling proceedings — Choice of landholder in respect of surplus land u/s 6(1) — Exercise of is not restricted to stage of filing tatement — Can also be exercised even after determination of extent of surplus land u/s. 6

It is no doubt correct that at the stage of filing of statement it is open to a person to specify the vacant land within the ceiling limit which he desires to retain but there is no

prohibition in the Act that at any stage after the finalisation of the proceedings under S 6 the person cannot give his choice as to which land he would give towards the excess land determined by the competent authority At the stage of S 6 the facts are disputed The extent of the vacant land which would come within the provisions of Ceiling Act has to be determined by the competent authority It is only after such a determination that a person whose land is sought to be taken by the competent authority can give a proper choice as to which land he would like to give to the State Government under the Act and as to which land he would like to retain In this view of the matter the provisions of S 6(1) cannot be interpreted to mean that a person whose vacant land is found to be in excess of the ceiling limit is prohibited from giving a choice except at the stage of S 6(1) of the Act AIR 1982 All 103 Rel on (Para 6)

Cases Referred Chronological Paras

AIR 1982 All 103 7 8

V K Gupta for Petitioner Standing Counsel for Respondents

ORDER — This is a petition under Art 226 of the Constitution of India arising out of proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 hereinafter referred to as the Act On 22 8 1984 the competent authority declared 934 93 square meters of land as surplus in the hands of the petitioner The petitioner filed an appeal against the said order before the District Judge Aligarh This was registered as Misc Appeal No 160 of 1984 In the appeal the petitioner did not challenge the order of the competent authority on merits by which the competent authority had declared 934 93 square meters of land as surplus but the petitioner submitted before the appellate court that the surplus land should not be taken from the land situate near Novelty Talkies but the same may be taken from the land of the petitioner situated at Grand Trunk Road The District Judge by order dt. 24-1 1985 dismissed the appeal with the observations that the question of choice would be considered at the time of proceedings under S 9 of the Act The petitioner has now challenged the order dt. 24-1 1985 by means of the present petition

2 I have heard the learned counsel for the petitioner and Shri L N Pandey learned Standing Counsel on behalf of the respondents

3 Learned counsel for the petitioner has urged that the District Judge has acted illegally and with material irregularity in the exercise of jurisdiction in not modifying the order dt. 22 8 1984 and directing the petitioner to give his choice Learned standing counsel, however has further urged that the ultimate order passed by the District Judge is correct and it is not open to the petitioner to give any choice now after proceeding under S 6 of the Act have been finalised by the competent authority According to the learned Standing counsel the choice had to be given at the time when the statement is filed under S 6(1) of the Act and since choice had not been given in that statement the petitioner cannot be permitted to exercise his choice at this stage now

4 Section 6(1) of the Act provides that every person holding vacant land in excess of the ceiling limit at the commencement of this Act has to file a statement before the competent authority specifying the location extent value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building whether or not with a dwelling unit therein, held by him and also specifying the vacant lands within the ceiling limit which he desires to retain

5 Learned standing counsel has laid great stress on the words and also specifying the vacant lands within the ceiling limit which he desires to retain used in S 6(1) of the Act His submission is that in view of this provision the choice should have been made by the person at the time of filing of the statement and not at any subsequent stage

6 I do not agree with the submissions made by the learned standing counsel. It is no doubt correct that at the stage of filing of statement it is open to a person to specify the vacant land within the ceiling limit which he desires to retain but there is no prohibition in the Act that at any stage after the finalisation of the proceedings under S 6 of the Act, the person cannot give his choice as to which land he would give towards the excess land determined by the competent authority At the stage of S 6 of the Act the facts are

disputed The extent of the vacant land which would come within the provisions of ceiling Act has to be determined by the competent authority It is only after such a determination that a person whose land is sought to be taken by the competent authority can give a proper choice as to which land he would like to give to the State Government under the Act and as to which land he would like to retain In this view of the matter the provisions of S 6(1) of the Act cannot be interpreted to mean that a person whose vacant land is found to be in excess of the ceiling limit is prohibited from giving a choice except at the stage of S 6(1) of the Act.

7 In Beni Prasad v District Judge Allahabad AIR 1982 All 103 a learned single Judge of this Court has opined as follows —

There is nothing in the Act which can be said to lay down that if the choice is not expressed under Sec 6(1) then such choice regarding the vacant land to be retained and the vacant land to be surrendered cannot be exercised at the subsequent stage when the objections u/s 8(3) of the draft statement are filed

8 I respectfully agree with the opinion expressed by the learned single Judge in the case of Beni Prasad (supra)

9 In view of the above I am of the opinion that the petitioner was entitled to give a choice after the extent of the land has been declared surplus in the hands of the petitioner in the order passed under S 6 of the Act

10 So far as the impugned order is concerned, the learned District Judge has also observed that it will be open to the petitioner to exercise his choice at the time of proceedings under S 9 of the Act It cannot therefore be said that the view taken by the District Judge is manifestly erroneous The order of the District Judge consequently which has been impugned in the present petition has to be sustained

11 It may however be observed here that in para 9 of the petition the petitioner specifically alleged that the excess vacant land should be taken from the land of the petitioner situate in gata No 359 or from gata No 242 situate at village Rasoolpur Swad III Road Aligarh. A counter affidavit of Jaideo Singh has been filed on behalf of the ceiling authority In para 7 of this counter affidavit which is a reply to para 9 of the writ petition it has not been denied that gata Nos 359 and 242 do not belong to the petitioner or that the land from these plots cannot be taken towards the excess vacant land which has been declared surplus In view of the admitted facts on record the competent authority while exercising his power under Sec 9 of the Act by drawing a final statement shall take into account first the petitioner's choice and in case the land in plots Nos 359 and 242 situate in village Rasoolpur Swad I T I Road Aligarh is not sufficient then only the other vacant land of the petitioner shall be declared surplus and taken possession of by the authorities concerned

12 With the above observations the petition is disposed of The parties are directed to bear their own costs

Order accordingly

1986 ALL L J 146

A N VARMA J

Smt Narayani Devi and others Appellants
v
Sonpal and others, Respondents

First Appeal No 59 of 1972 Dt / 21 8 1985 *

Hindu Succession Act (30 of 1956), S 14 — Applicability — Gift of entire property to widow — Only life estate given — Transfer therefrom, of one piece of land by widow — No proof that it was given to her in lieu of maintenance — Sub-s (2) of S 14 would apply

There is no presumption that every single property obtained by a Hindu widow by testamentary or intestate succession from her husband must be deemed to have been acquired by her for her maintenance If the Will or Instrument or a Decree which prescribes a restricted estate in property does not merely recognise pre-existing right of a Hindu widow then sub-s (2) of S 14 would be

*Against decree of I P Singh, 2nd Addl Civil J Aligarh D/ 20-10-1971

attracted in terms and deprive the widow of the benefit contemplated under sub-S (1) of S 14 But if the same is by way of recognition of the pre-existing right, sub-s (1) rather than sub-s (2) of S 14 will apply

(Paras 25 29)

The deceased had bequeathed entire properties both moveable and immoveable to his widow and the other legatees of the deceased husband were also under obligation to pay certain sum to the widow for her maintenance the widow was given only a life estate in the property bequeathed to her She transferred a small piece of land out of the said property to a trust.

Held that the widow had no problem of maintenance There was nothing in the will intrinsically to suggest that the small piece of land which she transferred was given to her in lieu of maintenance Thus sub-s (2) of S 14 would apply and the clause contained in the will prescribing a restricted estate in the property bequeathed to the widow would be fully operative (Paras 26 to 30)

Cases Referred	Chronological Paras
AIR 1979 SC 993	13 21
AIR 1977 SC 19	13
AIR 1977 SC 1944	18
AIR 1965 SC 271	41
AIR 1957 SC 434	31
AIR 1922 PC 261	31

G P Bhargava, for Appellants Keshari Nath Tripathi for Respondents

JUDGMENT — These two appeals arising out of the same suit are being disposed of by a common judgment. First Appeal No 59 of 1972 has been filed by some of the defendants who were arrayed in the suit as the defendants third set, while First Appeal No 64 of 1972 has been filed by the plaintiffs The suit which was for possession over properties described in schedules A and B of the plaint and for declaration that the plaintiffs were owners in possession of property No 2 of Schedule C of the plaint was partly decreed and partly dismissed by the court below The plaintiffs are aggrieved by the dismissal of part of their claim while the defendants are aggrieved by the decree of the court below by which relief has been granted to the plaintiffs in respect of the properties specified in the decree under challenge

2 It will be convenient to set out separately the plaint case in respect of different properties involved in the suit which have been described under the three schedules of the plaint, namely A, B and C

3 In regard to the property of schedule A' the plaint case was that under the sale deed dated 24-4-1953 one Radha Ballabh purchased a part of it from its owner Lalit Narain Dubey for a consideration of Rs. 1 000/ The same day one Bashir Uddin and Siraj Uddin executed a deed of exchange whereunder in lieu of a part of the property comprised in schedule B Radha Ballabh transferred the property purchased by him to Bashir Uddin and Siraj Uddin who in their turn sold the same to one Jagnnath (Jagannath?) Prasad under a sale deed dated 31 7 1954 for Rs 500/ with stipulation for resale of he property to them within an agreed period Thereafter Jagannath Prasad sold that property for Rs 700/ to Smt. Narain Devi wife of Radha Ballabh under a sale deed dated 25-5-56 This transaction was Benami in character the real owner being Radha Ballabh Under a Dastabardan (surrender) both Bashir Uddin and Siraj Uddin surrendered their right of repurchase available against Jagannath Prasad in favour of Radha Ballabh. Subsequently they executed a fresh dastabardan in favour of both Radha Ballabh and Smt. Narain Devi The remaining portion of the property of schedule A was purchased by Bashir Uddin aforesaid from one Kishan Lal through a sale deed dated 26-9-1960 which he transferred in the name of Smt. Narain Devi as Benamidar for Radha Ballabh for Rs 1 000/ only by means of a sale deed dated 2 9-1961 In this way Radha Ballabh became the owner of the property of schedule A

4 So far as the property specified in schedule B goes, the plaint case was that the property shown by letters R B A H Q K L V T U in map No 1 attached to the plaint was purchased by Radha Ballabh at a court auction sale on 21 2 1940 which was duly confirmed on 26-3-1940 Some dispute arose in regard to this property which led to Radha Ballabh s instituting suit No 286 of 1951 against Bashir Uddin and others which was

decreed on 26-2 1952 An appeal was preferred against that decree during which a sale deed dated 5-7 1952 was obtained by Radha Ballabh in the name of Smt. Narainu Devi as Benamidar from one Hasib Ullah and Salim Ullah in respect of a kothari which was now included in schedule B Subsequently on 7 7 52 Radha Ballabh and Bashir Uddin entered into a compromise with respect to this property as a result of which a sale certificate dated 31 5-1957 was issued in the name of Smt Narainu Devi as Benamidar for Radha Ballabh. Another sale deed dated 25-9 1958 was obtained by Radha Ballabh in the name of his wife Smt. Narainu Devi as a Benamidar for Radha Ballabh from one Bashir Uddin abas Chhotey and Media widow of Bashir Uddin in respect of the Kotha now included in the property of Schedule B That is how Radha Ballabh became the exclusive owner of the entire property specified in Schedule B

5 Regarding item No 2 of Schedule C the simple case of the plaintiffs was that it was purchased by Radha Ballabh from one Damodar Das and the name of Smt. Narainu Devi was added only as a Benamidar for him

6 In respect of all these properties described under different schedules A, B and C the plaintiffs case is that Smt Narainu Devi was only a Benamidar the real owner being Radha Ballabh, who remained in possession as owner thereof till his death on 16-8 64 On 21 9-1963 Radha Ballabh executed a registered will whereby he bequeathed his entire property to his wife Smt Narain Devi but giving her only a life estate therein It was also provided that she will not have any right to alienate the properties It was also provided that after the death of Smt Narainu Devi the properties belonging to Radha Ballabh would go to his sister and her sons who were arrayed as defendants 15 to 17 Thus Smt. Narainu Devi had no right to alienate any part of the disputed property The plaintiffs had a vested right in the same as provided under the will. Smt Narainu Devi who was initially arrayed as defendant No 1 in the suit also died during the pendency of the suit whereafter the plaintiffs became full owners of the properties specified in schedules A B and C However Smt Narainu Devi unauthorisedly and under the influence of some interested persons transferred portions of the property in suit to different persons Thus by a sale deed dated 2 3-1965 she sold the property of Schedule A to the defendants second set and executed a waqf deed dated 14-4-65 regarding the property of schedule B in favour of defendants 4 and 14 namely Smt Narainu Devi Trust and Sri Shivji Maharaj appointing defendants Nos 5 to 13 as trustees thereof for the construction of a temple and Dharmshala The sale deed and waqf deed are void and ineffectual in law and can not bind the plaintiffs who became full owners of the disputed properties in terms of the will dated 21 9 1963 made by Radha Ballabh In this view the plaintiffs became entitled to recover possession over the properties of schedules A and B and to a declaration of their title over the property mentioned in item No 2 in schedule C

7 The suit was contested by the defendants second set as well as defendants Nos 4 6 and 14 out of the defendants third set The defence of the defendants second set was that Smt Narainu Devi was the full owner of the property of schedule A which was in the shape of a vacant plot only and that she had validly transferred the same in their favour through the sale deed dated 2 3-1965 The said property was purchased by her out of her own funds and not as a Benamidar for Radha Ballabh These defendants also denied the execution of the will and said that the same was a fictitious and forged document conferring no right, title or interest on the plaintiffs They also pleaded that the suit was barred by estoppel and acquiescence

8 The defence of the defendants 4 6 and 14 (the appellants of appeal No 59 of 1972) was that the will set up by the plaintiffs was a forged and fictitious document and was not executed by Radha Ballabh In any case it was not a voluntary or conscious act of Radha Ballabh who was at the relevant time too old and weak in mind and body suffering from prolonged illness to be able to understand the implications of what he was doing The defendants also denied that Radha Ballabh had purchased the property of schedule A According to them Smt. Narainu Devi was a full and rightful owner of all the disputed properties and she had an absolute disposing power over the same The waqf deed in question was hence perfectly valid and effective in law Further the plaintiffs were

fully aware of the execution of the waqf deed and had even participated in the foundation laying ceremony of the temple and Dharamshala which has since been completed at a cost of Rs. 10 000/ The suit was, therefore barred by estoppel and acquiescence

9 On the pleadings of the parties the following issues were framed by the court below

1 Whether Radha Ballabh deceased was the owner of the properties detailed in schedules A B and C of the plaint?

2 Whether Radha Ballabh deceased executed the will dated 21 9 1963 relied upon by the plaintiffs if so its effect?

3 Whether Radha Ballabh purchased any property in dispute Benami in the name of his wife Smt Narainl Devi?

4 Whether Smt. Narainl Devi purchased any suit property Benami in the name of her husband Radha Ballabh?

5 Is the suit bad for multifariousness?

6 Whether the defendant No 1 had only a life interest in the properties in suit and was not competent to transfer any interest in the properties in suit? If so its effect?

7 Is the suit undervalued and the court fees paid is insufficient?

8 Is the suit barred by section 41 of the Transfer of Property Act?

9 Is the suit barred by estoppel and acquiescence as alleged?

10 Whether the sale deed executed by Smt. Narainl Devi in favour of defendants Nos 2 and 3 in respect of the property of schedule A is for legal necessity?

11 To what relief if any are the plaintiffs entitled?

12 Whether the defendant No 10 has no concern with the property in suit, and he has been unnecessarily impleaded, and is entitled to special costs under section 35-A of the C P C ?

13 Whether the plaintiffs are not entitled to the relief of declaration for reasons given in para No 20 of the Additional W S of defendants 4 6 and 14 paper No 239A?

10 Having set out the issues, I proceed to consider the merits of the two appeals

11 I shall first take up First Appeal No 59 of 1972 filed by the aforesaid Trust, and the deity through its managing trustee and Mahasay Ram Chandra another trustee who are arrayed in the suit amongst the defendants third set Sri G P Bhargava arguing for the appellants confined his submissions to that part of the property of Schedule-B to the plaint in regard to which Smt. Narainl Devi had created a waqf and for which the court below has granted a decree for possession to the plaintiff respondents This property has been indicated by letters A H C K L Z M V T U R P B in the plaint map No 1 The conclusions on the various issues relevant to this appeal as reached by the court below are as follows Radha Ballabh did execute the will dated 21 9 63 relied on by the plaintiffs and the allegations to the contrary made by the appellants are wrong and have remained unsubstantiated The suit is not barred by estoppel or acquiescence The plaintiffs did not do any act or omission which might attract the bar of estoppel or acquiescence This property marked by letters A H C K L Z M V T U R P B in the plaint map No 1 belonged exclusively and absolutely to Radha Ballabh and the transactions respecting thereto standing in the name of Smt. Narainl Devi were Benami in character the real owner being her husband namely Radha Ballabh The rest of the property of Schedule B marked by letters R S T U though not relevant for this appeal, has been held to belong to Smt. Narainl Devi

12 Sri G P Bhargava learned counsel for the appellants, did not challenge any of the aforesaid conclusions of fact reached by the court below against the appellants in regard to this trust property Indeed, he addressed no arguments thereon He however made two fresh submissions, which shall be dealt with below

13 The first and indeed the main argument of Sri G P Bhargava was that in virtue of Section 14(1) of the Hindu Succession Act (hereinafter referred to as the Act) Smt. Narainl Devi became absolute owner of all the properties bequeathed to her by Radha Ballabh under the aforesaid will notwithstanding the restrictions placed by the testator providing that she will have only a life interest in the properties and that she shall not have any right of alienation thereof In support

of this contention counsel placed reliance on the following decisions

1 AIR 1977 SC 19 Vaddeboyina Tulasamma v Sesha Reddi 2 AIR 1979 SC 993 Bai Vajia v Thakorbhai Chela Bhai

14 Elaborating his arguments Sri Bhargava submitted that as a Hindu widow Smt. Narain Devi had a pre-existing right of maintenance in regard to the property in question and consequently in terms of Section 14(1) of the Hindu Succession Act she became absolute owner thereof notwithstanding the fetters placed on her right of enjoyment by Radha Ballabh in the will. It was urged that in the aforesaid decisions the Supreme Court has ruled that if a Hindu widow has a pre-existing right of maintenance and if in recognition thereof certain properties are allotted to her any condition placed in a Will, Decree or other instrument purporting to restrict her rights shall have no effect on the applicability of Section 14(1) of the aforesaid Act

15 Having heard learned counsel for the parties, and having given the matter a careful consideration I am unable to agree The argument though simple and attractive on its face does not bear a closer scrutiny It proceeds on many factual assumptions which are non existent in the present case

16 At the outset it must be mentioned that the plea raised by Sri Bhargava was not canvassed in any form whatever before the court below There the plain and simple issue raised was whether the property was acquired by Smt Narain Devi from her own funds or she was only a Benamidar for Radha Ballabh The plea that she had acquired the property in lieu of maintenance was not even remotely hinted at before the court below And as I shall presently demonstrate the issue raised by Sri Bhargava is not an unmixed question of fact The submission proceeds on a wide assumption that this particular property was given to Smt. Narain Devi by Radha Ballabh in lieu of maintenance However even on merits the argument cannot be accepted

17 In order to appreciate the contention of the learned counsel it will be convenient to have a look at Section 14 of the Hindu Succession Act It provides

14 (1) Any property possessed by a female Hindu whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner

Explanation — In this sub section property includes both moveable and immovable property acquired by a female Hindu by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any persons whether a relative or not, before at or after her marriage or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift will, or other instrument or the decree order or award prescribe a restricted estate in such property

This section has been subject of an exhaustive consideration by their Lordships of the Supreme Court in two decisions cited by Sri Bharagava In both these decisions the question raised was whether a provision in a compromise decree purporting to restrict the right of enjoyment of certain properties given to a Hindu widow in lieu of her maintenance would attract sub-section (2) of Section 14 so as to prevent the property from vesting in the widow absolutely in terms of sub-section (1) of Section 14 After a survey of the entire law on the subject both textual as well as judicial precedents their Lordships ruled that there the decree or instrument restricting the right of enjoyment by Hindu widow of the properties given to her in lieu of maintenance merely recognizes a pre-existing right vesting in the widow sub-section (2) of Section 14 shall have no application and that the appropriate provision applying to such cases would be section 14(1) It is noteworthy that in both these cases specific immovable properties had been allotted to a Hindu widow in lieu of maintenance under a compromise decree which contained a restrictive clause conferring only a life estate on the widow Their Lordships observed that under the Shastric Hindu law the widow had an undoubted right of

maintenance for the satisfaction of which the properties in question were liable and if in satisfaction of her claim for maintenance she was allotted those properties sub-section (2) of Section 14 could not validly rob her of the full estate which was conferred on her by Statute

18 In order to elucidate the point it seems necessary to have a closer look at the precise nature of this right namely the claim of a Hindu widow for maintenance and its enforceability against joint Hindu family properties or the properties of her husband In the case reported in AIR 1977 SC 1944 His Lordship Bhagawati J observed after an extensive analysis of the tests and authorities on the subject that a Hindu widow can for the purpose of maintenance follow the joint Hindu family property into the hands of any one who takes it but his Lordship hastened to add that this right of maintenance is not a right to a property but it is a right against the property of her husband, because the widow has a legal right to be maintained out of the properties of her husband His Lordship stated the law thus at pages 1950 to 1951

It is therefore clear that under the sastric Hindu Law a widow has a right to be maintained out of joint family property and this right would ripen into a charge if the widow takes the necessary steps for having her maintenance ascertained and specifically charged in the joint family property and even if no specific charge is created, this right would be enforceable against joint family property in the hands of a volunteer or a purchaser taking it with notice of her claim. The right of the widow to be maintained is of course not a jus in rem, since it does not give her any interest in the joint family property but it is certainly jus ad rem, i e a right against the family property Therefore when specific property is allotted to the widow in lieu of her claim for maintenance the allotment would be in satisfaction of her jus ad rem, namely the right to be maintained out of the joint family property It would not be a grant for the first time without any pre-existing right in the widow The widow would be getting the property in virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre-existing right and not making a grant of the property to her for the first time without any antecedent right or title

19 After making the aforesaid observations His Lordship held that when specific property is allotted to the widow in lieu of her claim for maintenance the allotment would be in satisfaction of her right to be maintained out of the Joint Hindu Family properties It would not be a grant for the first time without any pre-existing right in the widow

20 Having stated the law thus and taking note of the fact that the property in question had been specifically allotted to the widow in satisfaction of her claim for maintenance His Lordship ruled that the compromise decree under which she was allotted that property conferred no fresh rights on the widow Consequently it must follow that the decree purporting to restrict her right consistently with the Sastric law could not validly attract sub-section (2) of Section 14 Explanation to sub-section (1) of Section 14 undoubtedly covered such upon its plain terms

21 The same view was reiterated in the other case viz AIR 1979 SC 993 Bai Vajia v Thakorbhai Chelabhai There also the position was that under a compromise decree specific properties were allotted to a Hindu widow in satisfaction of her claim for maintenance The decree however provided that the widow shall have a only life estate in the properties The Supreme Court held that sub-section (2) of Section 14 was not attracted as the decree merely recognized a pre-existing right of Hindu widow Explanation to section 14(1) was applicable in terms to such a case The property had not been conferred for the first time on the widow under the decree It was in this factual background that their Lordships negatived the claim of the plaintiffs founded on sub-section (2) of Section 14

22 The right to maintenance of a Hindu widow examined by the Supreme Court in the two decisions cited above was in the context of the Shastric law However under the Hindu Adoptions and Maintenance Act also the position is substantially the same Indeed, it seems statutory recognition has been given to the existing law as regards the claim for maintenance of Hindu widows and their dependants of a Hindu Thus Section 19

provides that a Hindu wife shall be entitled to be maintained after the death of her husband by her father in law from the estate of her husband Section 21 defines the term dependants of a deceased Hindu It includes his widow Then follows Section 22 which provides that the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased Section 22(2) however provides

Where a dependent has not obtained by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependent shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate

23 This provision is significant in the context of the present case Section 27 states

A dependant s claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof unless one had been created by the will of the deceased by a decree of court, by agreement between the dependant and the owner of the estate or portion or otherwise

24 The section reiterates the rule established by a long line of decisions under the Shastric law as previously applied, which was that a claim of a Hindu widow for maintenance is not a charge on the estate of her deceased husband until it is fixed and charged upon the estate The claim is of an indefinite character and unless made a charge upon the property is enforceable only like any other liability in respect of which no charge exists

25 It would thus seem that in the final analysis the vital question relevant for the application of Section 14 would be whether the Will or Instrument or a Decree which prescribes a restricted estate in such property merely recognises a pre-existing right of a Hindu widow If the answer is in the negative sub-s (2) of S 14 would be attracted in terms and deprive the widow of the benefit contemplated under S 14(1) of the Act if however the answer is in the affirmative sub-section (1) rather than sub-section (2) will apply

26 Turning to the facts of the present case I find that it has not been proved that the open piece of land transferred to the Trust was given to Smt Narainı Devi for her maintenance Under the Will Radha Ballabh had bequeathed considerable properties to Smt Narainı Devi The properties included residential buildings as well as shops and open pieces of land In one of the residential buildings Radha Ballabh was residing with Smt Narainı Devi The entire immovable properties were valued by the plaintiffs at Rs 44 000/ out of which the valuation of the disputed property was shown in the plaint as Rs. 3 000/ Sri G P Bhargava did not question the correctness of the valuation of the properties given by the plaintiffs in the suit

27 Besides immoveable properties Smt Narainı Devi was bequeathed moveable assets as well The evidence indicates that Sri Radha Ballabh was a person of substantial means So it may be safely assumed that Smt Narainı Devi had been amply provided by Radha Ballabh in the shape of both immoveable properties as well as moveable assets even without the aid of this piece of land which Smt Narainı Devi chose to transfer to the defendant appellant under the Waqf deed Not only that Radha Ballabh had specifically enjoined the other legatees to pay certain sums of money every month to Smt Narainı Devi for her maintenance Further admittedly Smt Narainı Devi had sold a part of the properties obtained by her under the will which further goes to prove that smt. Narainı Devi had no problem of maintenance

28 Intrinsically also there is nothing in the Will of Radha Ballabh which might suggest that the disputed property which Smt Narainı Devi had transferred to the defendant respondent trust was given to her in lieu of maintenance

29 There is no presumption that every single property obtained by a Hindu widow by testamentary or intestate succession from her husband must be deemed to have been acquired by her for her maintenance As has been laid down in the decisions cited above as well as the provisions of the Hindu Adoptions and Maintenance Act she had at best a right to proceed against the properties left by Radha Ballabh in satisfaction of her

claim for maintenance if she was unable to maintain herself from other properties and assets But from the mere circumstance that she could legally proceed against this property in satisfaction of her claim, it does not follow that the property must be deemed to have been acquired by her in lieu of maintenance within the meaning of Explanation to S 14(1) As observed by his Lordship Mr Justice Bhagawati in the decision reported in AIR 1977 SC 1944 the claim for maintenance is not jus in rem, but in only a jus ad rem i e a right against the property

30 My conclusion, therefore is that the property in dispute cannot be said to have been acquired by Smt Narain Devi in lieu of her maintenance The two Supreme Court decisions cited by Sri G P Bhargava are hence distinguishable for the simple reason that in both these cases specific immoveable properties had been allotted to the widow expressly in satisfaction of her claim for maintenance That being so section 14(2) clearly applies and the clause contained in the Will prescribing a restricted estate in the property bequeathed to Smt. Narain Devi must be held to be fully operative in the case

31 The second submission of the learned counsel for the appellants in this appeal was that even if Smt Narain Devi had a limited right in the property inasmuch as the alienation made by her in favour of the trust was for the spiritual benefit of her deceased husband it must be upheld as sanctioned by various texts and authorities In support learned counsel placed reliance on two decisions, namely AIR 1922 PC 261 and AIR 1957 SC 434 in which it has been ruled that a Hindu widow is entitled to make an alienation of a reasonable portion of the estate of her deceased husband for pious purposes or for objects which conduce to the bliss of the deceased husband s soul It was urged that the transfer was made consistently with the wishes of Sri Radha Ballabh himself That being so the transfer must be upheld even if legally Smt Narain Devi was not a full owner of the estate of her deceased husband

32 This point again was not canvassed in any form before the court below It is obvious that it is not a pure question of law The argument of the learned counsel is based on an unsubstantiated assumption that the alienation was made for the spiritual benefit of her deceased husband or in fulfilment of his wishes If the appellant had raised this issue before the court below the other side would have had the benefit of establishing whether or not the transfer made by Smt Narain Devi was for the spiritual benefit of Sri Radha Ballabh or her own Learned counsel however placed reliance on the recitals contained in the sale deed dated 2 3-1965 (Paper No 198 Ka) by Smt. Narain Devi in which it is mentioned that her husband wanted to construct a Dharmshala From this recital Sri Bhargava wanted this court to conclude that the transfer in favour of the Trust must be deemed to have been made for the spiritual benefit of Sri Radha Ballabh

33 I am unable to agree It will be unjust to the respondent to give a finding on this issue of fact on the mere recitals of the aforesaid sale deed executed in favour of some third party in the absence of an issue on the point Further it may be mentioned that if this had been the wish of Radha Ballabh there was nothing to prevent him from making a provision for it in the Will executed by him only a year or so before I am, therefore not inclined to entertain this argument at this stage

34 Further it is also doubtful whether a Hindu widow who possesses only a life estate still enjoys the aforesaid right formerly recognized in the tests and judicial pronouncements For under the Hindu Succession Act radical changes have been introduced conferring on Hindu females absolute right as well as right of inheritance equal in extent to that of a son Section 4 of the Hindu Succession Act provides that any text, rule of interpretation of Hindu Law enforced immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act or which is inconsistent with any provisions contained in this Act A claim of the nature canvassed by Sri Bhargava prima facie seems inconsistent with sub-section (2) of Section 14 of the Act. However I am expressing no concluded opinion on this point as the plea of Sri Bhargava is liable to be negatived on the first ground alone

35 Lastly I may add that although Sri Bhargava did not challenge the findings of the court below on any of the issues answered against the defendant appellants I went through the evidence to satisfy myself as to whether the conclusions reached by the court below such as Radha Ballabh had duly executed the Will dated 21 9 1963 and that the suit was not barred by estoppel and acquiescence or Section 41 of the Transfer of Properties Act were correct or not, and on a careful considerations of the same I find myself in agreement with the court below on all those findings

36 The result of the foregoing discussion therefore is that First Appeal No 59 of 1972 has no merit and is liable to be dismissed

37 I turn now to First Appeal No 64 of 1982 Sri K N Tripathi learned counsel for the appellants submitted that the court below committed an error in not holding that the entire properties detailed in schedules A B and C of the plaint were purchased by Radha Ballabh Benami in the name of Smt Narain Devi It was urged that on a proper appreciation of the evidence on record it was established beyond doubt that every single property purchased by Smt. Narain Devi really belonged to Radha Ballabh and that Smt Narain Devi was the mere Benamidar of Radha Ballabh I am unable to agree In my opinion the finding of the court below in regard to portions of the properties mentioned in different schedules of the plaint for which the suit of the plaintiff appellants has been dismissed is correct.

38 For convenience sake I shall take up the properties of different schedules separately and consider whether the properties purchased in the name of Smt. Narain Devi in regard to which the suit has been dismissed were benami the real owner being Radha Ballabh

39 The property of schedule A situate in Rafatganj admittedly belonged originally to one Lalit Narain Dubey from whom Radha Ballabh purchased the same under a sale deed dated 24-4-1953 The same day Radha Ballabh and one Basir Uddin and Siraj Uddin executed a deed of exchange under which the property of schedule A was given to Basir Uddin and Siraj Uddin in exchange and lieu of some portion of the property comprising part of the property of schedule B On 31 7 1954 Basir Uddin and Siraj Uddin transferred the property which they had got in exchange from Radha Ballabh by means of a sale deed dated 31 7 1954 to one Jagarnath Prasad with a stipulation therein for repurchase of the same by the vendors Thereafter Jagarnath Prasad sold this property in the name of Smt Narain Devi through a sale deed dated 25-5 1956 subject to the right of repurchase vesting in Basir Uddin and Siraj Uddin Meanwhile before transferring the property to Jagarnath Basir Uddin and Siraj Uddin had partitioned the property half and half the northern half going to Siraj Uddin and southern half to Basir Uddin Subsequently both Basir Uddin and Siraj Uddin entered into a separate transaction firstly with Radha Ballabh alone and thereafter with both Radha Ballabh and Smt. Narain Devi in respect of their respective portions Thus on 29 5 1958 Siraj Uddin executed a deed of transfer (Ex 23) in favour of Radha Ballabh in respect of his northern half portion while the same day Basir Uddin exercising his right of repurchase obtained a sale deed in respect of his southern portion Both these transactions were however superseded by something which is of some significance for the disposal of this issue On 25 9 1958 both Radha Ballabh and Smt Narain Devi jointly executed a fresh sale deed (Ext 24) in favour of Basir Uddin in respect of his southern half portion of this property Siraj Uddin similarly executed a fresh deed of surrender (Ex A 121) significantly in favour of both Radha Ballabh and Narain Devi in respect of his northern portion There was no transaction thereafter with respect to the northern portion of the property However Basir Uddin transferred his southern half portion to one Kishan Lal by a sale deed dated 23-10-1959 under a similar right of repurchase Subsequently on 6 9 1960 he obtained a retransfer of the said portion from Kishan Lal Finally by a sale deed dated 2 8 1961 (Ex A 119) Basir Uddin sold this southern portion to Smt Narain Devi

40 From a resume of facts set out above it is clear that the ownership of both the northern and southern portions of the property of Schedule A finally came to be vested in Smt. Narain Devi, though initially the property had been purchased by Radha Ballabh The title in the northern portion came to vest in

Smt. Naraini Devi under the sale deed dated 2-5-56 (Ex. A 118) executed by Jagannath (Jagamath?) Prasad and in the southern portion on 2-8-61 under the sale deed (Ex. A 119) executed in her favour by Basir Uddin.

41. It is indisputable that the onus of proof that these properties though standing in the name of Smt. Naraini Devi under formal deeds of title really belonged to Radha Ballabh and that Smt. Naraini Devi was only a Benamidar for the former. The law on the subject has been put beyond any controversy by several pronouncements of the Supreme Court and of the Privy Council but it would be sufficient to refer only to one decision reported in AIR 1965 SC 271. In this case their Lordships of the Supreme Court ruled that the onus of proof that a transaction is benami is on the party which sets up the case of benami character of the transaction. Another principle laid is that even if it is found that the consideration for a transaction of sale entered into by the husband in the name of his wife was provided by the former, the same is not conclusive to establish that the transaction was Benami.

42. In the present case, however, as I shall presently demonstrate, the plaintiffs have failed to prove by any cogent or convincing evidence that the consideration for the transactions of sale was provided by Radha Ballabh and not by Smt. Naraini Devi herself. In any case, the conduct of Sri Radha Ballabh as also the intervening transactions with regard to the property completely negative the possibility that the properties were intended to be Benami in the name of Smt. Naraini Devi. On the contrary the transactions indicated that Radha Ballabh himself intended that Smt. Naraini Devi should be the true owner of the property.

43. Taking up the question of the source of money, first I find that there is no independent or reliable evidence at all that the money was provided by Radha Ballabh and not by Smt. Naraini Devi, herself. It is apparent that there is no presumption that the sale deed standing in the name of Smt. Naraini Devi must have been obtained out of the funds provided by Radha Ballabh. On this part of the case, the only testimony is that of Ram Kishan (P.W. 3), one of the plaintiffs himself. Apart from his own highly interested testimony, there is no other evidence worthy of reliance which might affirmatively prove that the consideration was provided by Radha Ballabh. Ram Kishan (P.W. 3) in his statement said that Radha Ballabh had told him in the presence of some others, like Matroo Mal and the scribe of the sale deeds that the name of Smt. Naraini Devi was being mentioned in the sale deeds only for her consolation (Dilji). Significantly, however, none of the persons in whose presence Radha Ballabh is alleged to have stated this was produced on behalf of the plaintiffs. P.W. 1 Shiv Narain no doubt generally stated that Radha Ballabh was a man of some means but he was wholly unable to say anything about the financial resources of Smt. Naraini Devi. P.W. 2 Damodar Das was also unable to say anything about the income or the financial position of Smt. Naraini. He candidly admitted that he was wholly unable to say whether Smt. Naraini Devi was earning money by stitching wedding garments. He was also unable to say whether Smt. Naraini Devi purchased any property from the custodian. He frankly admitted that he knew nothing about the financial status of Smt. Naraini Devi. Likewise the other witnesses of the plaintiffs were also entirely unable to support the plaintiffs' claim that the consideration was provided by Radha Ballabh.

44. Learned counsel, however, took me through the statements of defendants' witnesses and submitted that they have completely failed to prove that Smt. Naraini Devi had any substantial or independent source of income so as to enable her to purchase the properties. In this connection, it is sufficient to say that assuming that the defendants' witnesses have not been able to prove that Smt. Naraini Devi had any regular source of income that would not be of any assistance to the plaintiffs as the onus that the transaction was Benami lies on the plaintiffs and they cannot claim a decree on the basis of any alleged weakness in the case of the defendant.

45. From a consideration of the evidence on record, I have no hesitation in holding in agreement with the court below that the plaintiffs have miserably failed to prove that the consideration for the transactions in question was provided by Radha Ballabh and that Smt. Naraini Devi was not possessed of sufficient means to enable her to purchase the

properties from her own independent funds I may add here that the transaction of sale of 1956 in favour of Smt. Narainı Devi was only for Rs. 700/ The sale consideration for the purchase of the property from Basir Uddin was also of the same order These amounts were by no means very substantial or such which a lady of the status of Smt. Narainı Devi could not have possibly paid from out of her own personal savings or resources

46 The intervening events also negative the theory that the transactions of sale in favour of Smt Narainı Devi evidenced by the sale deed dated 25-5-56 (Ex A 118) and dated 2 8 61 (Ex A 119) were Benami Firstly there was no reason why the property which was originally purchased in the name of Radha Ballabh should be allowed to be subsequently purchased in the name of Smt Narainı Devi. No satisfactory reason has been offered why the property could not be purchased from Jagannath (Jagarnath?) in Radha Ballabh s own name Further after the sale deed and the deed of surrender dated 25-5-58 (Exs 23 and 27) which initially stood solely in the name of Radha Ballabh these documents were rewritten on 25-9 58 (Ex 24 and Ex A 121) in the names of both Radha Ballabh and Smt Narainı Devi If Radha Ballabh was the real owner of these properties. fresh deeds of sale and surrender executed in the name of both himself and Smt Narainı Devi seemed superfluous To my mind these transactions clearly indicate that even Basir Uddin and Siraj Uddin recognised of surrender (Ex A 121) recites that it was executed at the instance of Smt Narainı Devi which shows that she was asserting ownership rights

47 Thus the intervening transactions clearly suggest that Radha Ballabh as well as Basir Uddin and Siraj Uddin all treated Smt. Narainı Devi as the real owner of the property There is no other explanation for various intervening exercise of deeds of surrender and sale in which the name of Smt Narainı Devi figured

48 Learned counsel for the plaintiffs tried to seek some support from the description of the northern boundary in the sale deed dated 29-5-58 (Ex. 26) which records that the property to the north of the building being so belonged to Radha Ballabh. Learned counsel contended that this was an admission by Smt Narainı Devi that Radha Ballabh was the owner of the northern portion of the property I am unable to agree The court below has rightly said that Radha Ballabh was taking active part in various transactions and it is possible that in the sale deed (Ex 26) the northern boundary was wrongly mentioned as belonging to Radha Ballabh and this error went undetected by Smt. Narainı Devi In any case the so-called admission is not sufficient to nullify the rest of the volume on the record which fully supports the case that Smt Narainı Devi was not the Benamidar of Radha Ballabh

49 Learned counsel for the plaintiffs also laid stress on the circumstances that Smt Narainı Devi though arrayed as a defendant did not file any written statement and deny the assertions made in the plaint as well as the statements made under Order 10 In my opinion not much weight can be attached to the omission of Smt. Narainı Devi to file a written statement Her omission cannot be used as an admission against the contesting defendants

50 On a consideration of the entire evidence on record therefore I find myself in complete agreement with the court below that the plaintiffs have failed to prove their case that the properties of Schedule-A really belonged to Radha Ballabh and Smt Narainı Devi was a mere Benamidar for him

51 This brings me to the property of Schedule B marked by letters R S T U in regard to which the plaintiff s suit had been dismissed by the court below Here also the position is that under a sale deed dated 28 9 1958 one Usman sold this property for Rs 1 900/ to Smt Narainı Devi There is no other transaction in regard to this property which might support the plaintiffs case that Smt Narainı Devi was a Benamidar for Radha Ballabh The evidence on record does not indicate that Radha Ballabh was present at the time of the execution of the sale deed The evidence led by the plaintiffs with regard to the source from which the consideration for this transaction came is of the same variety as that discussed by me while dealing with the property of Schedule A Here also I find that there is no independent and reliable evidence which might support the claim of the plaintiffs

that the real owner was Radha Ballabh and that Smt Narain Devi was a mere Benamidar

52 So far as the property mentioned at item No 2 of Schedule C is concerned the position is that the house was purchased from Damodar Das through sale deed dated 7 4-48 for Rs 6000/ jointly in the name of Sri Radha Ballabh and Smt Narain Devi The court below has discussed the evidence in regard to this property at length and has come to the conclusion that this property belonged both to Radha Ballabh and Smt Narain Devi in equal shares I entirely agree with the comments made by the court below I have gone through the statements of P W 1 Shiv Narain and P W 2 Damodar Das to which my attention was invited by the learned counsel for the plaintiffs but I am unable to place much reliance on their testimony P W 1 Shiv Narain simply says that Radha Ballabh was employed in the concern called New Popular Cycle Mart Agra and that he had Rs 15 000/ deposited to his credit in the book of that firm He further says that Radha Ballabh had withdrawn Rs 5 000/ out of that amount However there are no proper accounts forth coming in support of this allegation Secondly the plaintiffs are also the employees of this concern and consequently the testimony of P W 1 cannot be said to be entirely unbiased or independent Further there is no reliable evidence to establish that the sum of Rs. 5 000/ alleged to have been withdrawn by Radha Ballabh was invested in the purchase of this house

53 P W 2 Damodar Das also does not inspire much confidence and he seems to have appeared as a witness only to oblige the plaintiffs He simply says that Radha Ballabh had told him that the name of Smt Narain Devi was being included in the sale deed only for her consolation There was however no occasion for Radha Ballabh to tell this fact to Damodar Dass The court below was hence right in not placing reliance on the plaintiffs witnesses in regard to the property of Schedule C also According to the recitals in the sale deed Radha Ballabh and Smt Narain Devi both were to be the owners of this property in equal shares The plaintiffs case of benami character of the transaction was hence rightly rejected in regard to this item of the property also

54 In the result both the appeals fail and are dismissed There will, however be no orders as to costs in either of these two appeals

Appeals dismissed

1986 ALL L J 157

S K DHAON J

Ram Naresh. Petitioner v Board of Revenue U P at Allahabad and others Respondents

Civil Misc Writ Petn No 9241 of 1978 D/ 25-9 1985

(A) Evidence Act (1 of 1872), Ss 17, 31 — Admission — Admission of party is not conclusive proof of the matter admitted

Sections 17 and 31 make it clear that an admission is not conclusive proof of the matter admitted An admission merely suggests an inference to the Court on some fact or facts in issue Therefore before the Court draws any inference against a party making an admission it becomes its duty to scrutinise the evidence in and out It should examine the deposition whole hog on the point in issue and not base its judgment on truncated or extracted portion of an alleged admission The inference has to be a clear one and therefore the admission must be an unequivocal and comprehensive one (Para 9)

(B) U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 229 B — Suit for declaration of Bhumidhari rights under S 229 B — Plaintiff claiming to be a co-Bhumidari — Findings on question of ouster of plaintiff from the property in dispute — Board of Revenue not referring to any other material except the alleged admission regarding surrender of property by the plaintiff — Matter remanded to appropriate authority for considering other material on record having bearing on said question (Paras 13, 15)

Cases Referred Chronological	Paras
AIR 1966 SC 405	10
AIR 1957 All 1 (FB)	11
AIR 1930 PC 245	12

R N Singh for Petitioner Namwar Singh and Beni Prasad for Respondents

---

KC/LC/G266/85/VNP

ORDER — This is a plaintiff's writ petition arising out of a suit for declaration under S 229 B of the U P Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) The subject matter of the controversy is certain grove land of which the petitioner claims to be a co-Bhumidhar along with respondent 4 Ramu The plaintiff's case is that the land in suit is a joint family property and after the date of vesting the family became the Bhumidhar of the same and therefore he and the defendant Ramu (respondent 4) are co-sharers Amongst other pleas, the defendant in his written statement pleaded that the suit was barred by limitation The defendant also pleaded that the plaintiff has surrendered his rights in the land a long time back and since the said surrender he was in continuous possession over the land to the exclusion of the plaintiff

2 The trial court negatived the plea of surrender raised by the defendant. It, however relying upon the oral and some other evidence plus the deposition made by the plaintiff in the suit, recorded a finding that the defendant acquired rights by prescription and, therefore the suit was barred by limitation The first appellate court reversed the findings of the trial court and decreed the suit In second appeal the Board of Revenue has set aside the decree of the first appellate court and restored the decree of the trial court dismissing the suit. Hence this petition

3 In second appeal, the Board of Revenue has recorded a finding that the ouster of the plaintiff from the land in dispute stands established from the admission made by the petitioner (plaintiff) in his deposition in the suit itself.

4 In support of this petition it is urged that in the absence of any plea of ouster in the written statement, the Board of Revenue had no jurisdiction to throw out the suit of the plaintiff on the ground that the rights of the plaintiff stood extinguished A true copy of the written statement of Ramu the defendant, has been filed along with a supplementary affidavit filed on behalf of the petitioner I have gone through the written statement more than once It is true that neither the word ouster has been used in the written statement nor is such a plea specifically raised as required by the form of general defence given in Schedule I appendix A of the Code of Civil Procedure A written statement should normally be in accordance with the procedure prescribed Times out of number courts have deprecated the practice of not observing the rule But at the same time a court of law should be loath to reject a written statement outright on account of a technical defect. Therefore nothing will turn upon he written statement not being in accordance with Appendix A to Schedule I We have to concentrate on the substance of the averments made in the written statement and not the form

5 The plea of surrender of the land in dispute by the plaintiff has been taken in specific terms This plea as already stated has not found favour with the trial court Nonetheless the contents of the written statement have to be scrutinised to discern whether the necessary facts constituting ouster have been stated or not It is to be borne in mind that the word ouster has no magic enchantment True it has acquired a legal connotation and the mere use of this word conveys the legal implications which are attached to it However if instead of using the word the draftsman puts in the relevant material from which such a defence can be inferred, the requirement of the law is complete and courts of law will have to proceed on the assumption that a plea of ouster has been really taken

6 In para 12 of the written statement it was averred that Sukkhu the predecessor in interest of the plaintiff migrated to the place of his in laws about 80 to 85 years back he surrendered his rights in all his properties including the land in dispute and since then he had no connection left with any of the properties In para 13 it was recited that Sukkhu since the alleged surrender neither resided in the village wherein the land in dispute is situate nor did he have anything to do with the property situate there nor was he in possession over the same On the contrary the defendant had been in exclusive physical possession over the land in dispute In para 15 it was stated that Sukkhu merely retained one-third share in a house with respect to which he later on executed a sale deed in favour of the defendant Finally in para 16 it

was stated that the suit was barred by time Having considered the matter carefully I am of the view that in substance the plea of ouster has been raised by the defendant

7 Let us now examine the deposition of the plaintiff (the petitioner) recorded in the suit to meet the submission of his learned counsel that the Board of Revenue has not only misread the statement, has not only taken an extract of the deposition out of the context, but has also thrown overboard the well accepted principle of the construction of an admission of a party It is to be borne in mind that the alleged admission has been extracted in cross examination

8 In the examination in chief the plaintiff stated that the property in dispute was a joint family property His father in 1950 acquired Bhumidari rights over the same and obtained a sanad and his name was entered in the revenue papers The Lekhpal deliberately did not enter his name after his father s death His father did not surrender his rights He did not execute any sale deed of his share in the house Before we read the cross examination it has to be borne in mind that the property in dispute as well as the house referred to in the deposition of the plaintiff are situate within the municipal limits This fact is evident from the statement of the plaintiff in the examination-in chief that prior to the institution of the suit he had given notice to the State of Uttar Pradesh as well as to the Nagar Mahapalika In the cross examination the plaintiff stated that he enquired about his share in the property in dispute from the defendant Ramu and he was informed that he (the plaintiff) had no share in the same Then he made enquiries from the village Lekhapal He made this enquiry about 8 months back The plaintiff was subjected to a long cross examination about the family members as well as about the situation of the various plots which are the subject matter of the suit. To one question his answer was that at no stage did he ever pay any tax to the Municipality with respect to his house Apart from the property in dispute he held land covering 13 biswas He had no other property at that time It was wrong to suggest that his father had executed any deed of surrender in favour of Ramu or Ramu s father It was wrong to suggest that he had no property in village Bharlai (the village where the property in dispute is situate) It was wrong to suggest that in village Bharlai he had no house It was wrong to suggest that he had executed a sale deed of a share in the house in favour of Ramu Once 15 or 16 years back he had asked Ramu to get his name mutated At that time no one else was present. Ramu refused this request by saying that he had no share Thereafter the cross examiner put certain questions regarding the number of children the other members of the family had Then a question was asked about the possession of Ramu over the property in dispute He stated that he was paying land revenue with respect to the property in dispute and this payment was being made to Ramu and so on

9. Sections 17 and 31 of the Evidence Act make it clear that an admission is not conclusive proof of the matter admitted An admission merely suggests an inference to the Court on some fact or facts in issue Therefore before the Court draws any inference against a party making an admission it becomes its duty to scrutinise the evidence in and out. It should examine the deposition whole hog on the point in issue and not base its judgment on truncated or extracted portion of an alleged admission The inference has to be a clear one and therefore the admission must be an unequivocal and comprehensive one

10 In Bharat Singh v Mst. Bhagirathi, AIR 1966 SC 405 it was held that admissions have to be clear if they are to be used against a person making them

11 In Ajodhya Prasad Bhargava v Bhawani Shanker Bhargava, AIR 1957 All 1 (FB) this Court has taken the view that an admission should be clear certain, definite and not ambiguous, vague or confused

12 In Jwala Das v Pirsant Das AIR 1930 PC 245 the view taken is that if a statement is to be relied upon as an admission the whole statement must be taken

13 Reading the statement of the plaintiff through and through, the conclusion is inevitable and also keeping in view the fact that the Board of Revenue has turn out of context a few lines from the deposition of the plaintiff (the lines underlined by me above) the conclusion is irresistible that the plaintiff did not make any admission much less a clear

certain and definite one that about 15 or 16 years back the defendant Ramu had informed him (the plaintiff) that he had no share in the property in dispute Since the Board of Revenue has not referred to any other material except the alleged admission of the plaintiff while recording his findings on the question of ouster of the plaintiff from the property in dispute the matter has to be sent down to the appropriate Court for considering the other material on record having bearing on the said question

14 I am deliberately refraining from expressing any opinion as to what in law constitutes ouster although some debate has taken place before me on this question There is no limitation prescribed by or under the Act for instituting a suit for the declaration of rights under S 229-B A suit for possession by a co-sharer is not contemplated by law His remedy is to file a suit for partition Therefore S. 209 of the Act will have no application in the case of a suit for possession by a co-Bhumidhar For filing a suit for partition under Si 176 of the Act too no period of limitation is prescribed by or under the Act. Sub-cl. (c) of S 189 is referable to S 209 Section 341 makes the provisions of the Limitation Act, 1963 applicable to the proceedings under the Act unless otherwise expressly provided by or under the Act. There is nothing in the Act to indicate that the provisions of the Limitation Act will not apply to suit instituted under S| 229B Therefore the provisions as contained in S 27 of the Limitation Act will be attracted to suits instituted under section 229B Section 27 of the Limitation Act provides that at the determination of the period hereby limited to any person for instituting a suit for possession of any property his right to such property shall be extinguished Therefore it is for the defendant to prove that the rights of the plaintiff have extinguished even though the property in dispute is a joint family property and the parties are co-sharers. This can happen only if the ousted from the property in dispute for the period more than the one prescribed for the institution of the suit for possession While giving its finding on this question the Court will analyse the evidence led by the defendant in this behalf and then it will apply the relevant law

15 The question now arises as to which Court should be directed to give a fresh decision The first appellate court has decreed the suit. I see no reason as to why the petitioner should be deprived of the finding given by the first appellate court in his favour I therefore consider it appropriate that the Board of Revenue should rehear the appeal and give a fresh decision

16 This petition succeeds and is allowed The order dt 31 7 1978 passed by the Board of Revenue is quashed It is directed to rehear the appeal of the respondent and decide the same on merits and in accordance with law and in the light of the observations made above There shall be no order as to costs

Petition allowed

1986 ALL L J 160

S D AGARWAL J

Shasi Nath Pathak Petitioner v Smt Phool Mani Devi and another Respondents

Civil Misc Writ Petn No 1044 of 1985 D/ 3-9 1985

(A) Civil P C (5 of 1908), O 41, R 27, O 42, R 1, O 41 A, R 1, (as added by All) High Court) — Second appeal — Additional evidence — Court can permit the party to adduce additional evidence

(Paras 4, 5)

(B) Civil P C (5 of 1908), O 41, R 27 — Second appeal — Additional evidence — Affidavits of a party discarded simply on technical grounds — Court held was justified in admitting additional evidence

(Paras 6, 7)

Rajendra Kumar for Petitioner Ajai Kumar Misra for Respondents

ORDER — This is a petition under Art 226 of the Constitution The dispute relates to mutation proceedings in respect of house Nos D-36/229 230 and 233 situate in Mohalla August Kunda Varanasi Originally houses Nos 36/229 36/230 were entered in the name of one Bindeshri Pathak in the municipal records House No 36/233 was recorded in the name of deity Bindeshri Pathak

died Respondent 1 applied for mutation of her name in respect of the aforesaid properties on the ground that she is the sole heir of the deceased on the basis of a will dt 7 6 1982 The petitioner contested this proceeding and his case was that in fact he is the only legal heir of the deceased

2 The Nagar Mahapalika Varanasi allowed the application of the respondent 1 Aggrieved, the petitioner filed an appeal before the Judge Small Causes Court Varanasi The Judge Small Causes Court Varanasi allowed the appeal and set aside the order of the Nagar Mahapalika Against the order of the Judge Small Causes Court a second appeal was filed by the respondent 1 in the Court of District Judge Varanasi being mutation second appeal No 60 of 1983 During the pendency of the appeal the appellant Smt Phoolmani Devi moved an application under O 41 R 27 of the Civil P C for admitting certain papers on the ground that the appellant is a widow and could not file certain papers in the lower appellate court It was also submitted that certain papers in the custody of the appellant s son in law who mostly resided out of station had been misplaced and the said papers were traced out and were being filed as additional evidence The IIIrd Additional District Judge Varanasi before whom the appeal is pending allowed the application under O 41 R 27 Civil P C by an order dt 29 11 1984 This order dt 29 11 1984 has been impugned in the present petition

3 I have heard the learned counsel for the parties Learned counsel for the petitioner has contended that it was not open to the appellate court at the stage of second appeal to permit additional evidence to be taken It has been further urged that no reasons have been given for accepting the documents sought to be produced as additional evidence and as such the order is vitiated

4 In so far as the first contention of the learned counsel is concerned under O 41 R 27 Civil P C the appellate court is entitled to allow additional evidence or document to be produced in the circumstances mentioned in the said rule O 41 A has been added by the Allahabad High Court as additional order in the Civil P C O 41 A R 1 provides as follows —

1 Extent — The rules contained in this Order shall apply to appeals in the High Court notwithstanding anything to the contrary contained in O XII or any other order and the rules contained in O XLI shall be deemed to have been modified or repealed in their application to such appeals to the extent of their inconsistency or repugnancy or as indicated herein

The above mentioned rule of O 41 A clearly contemplates that the rules contained in O 41 shall be deemed to have been modified or repealed in their application to second appeals to the extent of their inconsistency or repugnancy or as indicated in O 41 A but otherwise the rules of O 41 would apply in the case of second appeals also

5 O 42 R 1 of the Civil P C lays down that the rules of O 41 shall apply so far as may be to appeals filed from appellate decree On a reading of O 41A R 1 of the Civil P C added by this court and O 42 R 1 it is clear that the Rules contained in O 41 would be applicable to second appeals also In the circumstances it cannot be said that the second appellate court has no jurisdiction to entertain the application under O 41 R 27 of the Civil P C and to pass orders thereon The first submission of the learned counsel for the petitioner consequently in my opinion is not substantiated

6 In regard to the second submission of the learned counsel the court has considered the circumstances why it has permitted the additional evidence to be taken The explanation given by the respondent No 1 for filing the additional evidence had been accepted It has been further stated that the affidavits which have been filed before the Nagar Mahapalika had been discarded simply on the technical grounds and as such it was necessary in the interest of justice to permit fresh affidavits of the attesting witnesses to be filed In my opinion the judgment contains reasons for admitting additional evidence The order cannot be challenged on the ground as alleged by the learned counsel for the petitioner

7 By the impugned order the court has permitted the petitioner also to file documents in rebuttal In the circumstances no prejudice has been caused to the petitioner by the order

dt 29th Nov 1984 In fact the court rightly allowed the application as it is in the interest of justice that both the parties be permitted to produce evidence on merits in order that the court may come to a correct conclusion No interference therefore is called for under Art 226 of the Constitution of India on this ground also

8 In the result I do not find any merit in this petition It is accordingly dismissed but in the circumstances of the case the parties are directed to bear their own costs The interim order dt 17 1 1985 is hereby vacated

Petition dismissed

1986 ALL L J 162

= AIR 1986 Supreme Court 313

= 1985 Cri. L J 1921

(From Allahabad)*

AMARENDRA NATH SEN AND RANGANATH MISRA JJ

Criminal Appeals Nos 316-318 of 1977 D/ 25 9-1985

The State of U P Appellant v Satish Chandra and others Respondents

Penal Code (45 of 1860), S 300 — Murder — Appreciation of evidence — Solitary witness — Witness, close relation of deceased — Claiming to know accused — His evidence showing him to be a stranger to accused — Held, accused entitled to acquittal. (Evidence Act (1872), S 134)

It is not necessary in law that more than one witness should be examined to prove a fact but unless the witness is very reliable the court would ordinarily look for corroboration Hence where in a murder trial the only prosecution witness who supported the case was a close relation of the deceased and though he claimed to know the accused it transpired from his evidence that he was a stranger so far as the accused were concerned, the High Court was justified in acquitting the accused Crl Appeals Nos 840 860 and 905 of 1975 (All) Affirmed (Para 6)

*Criminal Appeals Nos 840 860 and 905 of 1975 D/ 27 10-1975 (All)

JC/JC/F556/85/SMA

Mr J N Tiwari Sr Advocate Mr Dalveer Bhandari Mr Manoj Prasad and Miss Rachna Joshi with him for Appellant Mr A P Mohanty Mr Sarv Mitter and Mrs S Mitter Advocates (in Crl A Nos 316 17 of 1977) and Mr U S Prasad and Mr Harihar Chaturvedi Advocates (in Crl A No 318 of 1977) for Respondents

RANGANATH MISRA, J — These appeals are directed against a common judgment of acquittal passed by the High Court of Allahabad after obtaining special leave

2 Prosecution alleged that the five accused persons (respondents) had caused death of Raaz Mohammad on April 20 1973 in the Sweepers Colony within Gorakhpur city The First Information Report was lodged within half an hour of the incident

3 At the trial P W 1 was the only witness who supported the prosecution case Rahim Khan (P W 1) and the deceased were Afghan Nationals and were carrying on business of money lending P W 1 was also work ng as a hawker of cloth The deceased was his nephew Both of them lived in Gorakhpur for about five years before the occurrence According to the prosecution respondents had already taken some loan from the deceased and wanted further loans When the deceased refused to oblige Satish stabbed him with a knife in the stomach After the deceased fell down two of the accused respondents caught hold of him by his legs and the other two held him by hands and Satish gave further blows with the knife as a result of which he died The learned trial Judge accepted the evidence of P W 1 and found support from the circumstances as indicated in his judgment he accordingly convicted Satish under Section 302 of Indian Penal Code and imposed the sentence of death The other accused persons were convicted under S 302/49 of I P C and were given imprisonment for life All the respondents except Satish were convicted under S 147 and Satish under S 148 I P C

4 On appeal the High Court took the view that the evidence of P W 1 that he knew the respondents was not acceptable The circumstances on which the trial Court had based the conviction were not available to be relied upon according to the High Court It

also referred to an application forthcoming from the record where request had been made for holding an identification (parade) on the plea that P W 1 did not know the respondents It appears that no orders were passed on that petition and no identification was carried out The High Court therefore held that the prosecution had not been successful in establishing the guilt of the respondents The conviction was set aside and acquittal followed

5 The facts of these appeals depend upon the appreciation of evidence of P W 1 This witness according to his testimony had accompanied the deceased when the incident took place He stated that he had come to know the respondents on account of the fact that the respondents had money lending transactions with the deceased P W 1 in his cross examination admitted I do not know where Satish Dubey accused lived at the time of the occurrence but I had seen him visiting the Sweepers Colony along with other accused persons I do not know where Suraj Sharma was living at that time I do not also know where the other accused persons live I never went to their houses I never had any talk with these persons From these statements in cross examination the High Court came to hold that acquaintance of P W 1 with the respondents was not established We do not think the conclusion of the High Court is open to challenge So far as the assessment of the evidence of P W 1 is concerned Mr Tewari learned counsel for the appellant relied upon the evidence of P W 6 This witness was approached by P W 1 for scribing the first information report and the report was written on the road as stated by the witness According to him when he reached the spot after scribing the first information report he heard people saying that the respondent Satish had assaulted the deceased and had run away from the spot We do not think the evidence of this witness can be used by the prosecution to any appreciable extent

6 It is not necessary in law that more than one witness should be examined to prove a fact but unless the witness is very reliable the Court would ordinarily look for corroboration P W 1 is admittedly a close relation of the deceased and he is a stranger so far as the accused are concerned Unless there is satisfactory evidence to implicate the accused persons in the crime it would be difficult to hold that the accused persons had really caused death of the deceased While all other particulars relating to the prosecution case may not be disputed as held by the High Court the authorship of the crime had been in dispute and the prosecution has to fail as it has not established that fact If the link between the incident and the respondents is not established the High Court was justified in acquitting them

7 We are of the opinion that the acquittal by the High Court in such circumstances is not open to attack The appeals fail and are dismissed The order of acquittal passed by the High Court is upheld The respondents are already on bail their bail bonds are cancelled

Appeals dismissed

1986 ALL L J 163

A N VARMA J

Sukh Ram Singh and another Revisionists v Baij Nath Singh and another Opposite Parties

Civil Revn No 2873 of 1978 D/ 2 8 1985 *

(A) Religious Endowments Act (20 of 1863), Ss 18, 14 — Applicability — Sections 14 and 18 apply to religious endowments created both before and after 1863

(Para 2)

(B) Religious Endowments Act (20 of 1863), Ss, 18, 14 — U P Public Charitable and Hindu Religious Institutions and Endowments Ordinance (16 of 1976), S 94(1)(2) — Ordinance did not repeal the Central Act — It merely suspended operation of Central Act temporarily — Application under S 14 made after expiry of Ordinance — Maintainable. (U P General Clauses Act (1 of 1904) Ss. 6, 7)

When the Legislature specifically refrained from using the expression repealed in sub-sec (2) of S 94 while using the same in sub-

*Against judgment and order of S B L Kakkar Dist J Hamirpur D/ 3-5-1978

JC/JC/F595/85/KJK

sec (1) of S 94 it must follow without question that the legislative intent was not to repeal the Religious Endowments Act 1863 It was on the contrary to allow the Act to remain on the Statute Book in spite of the Ordinance of 1976 Only its operation had been suspended temporarily on account of the promulgation of the Ordinance With the expiry of the Ordinance therefore the temporary cloud which was cast on the Religious Endowments Act stood removed and it again came into operation (Paras 6 7)

In this connection no reliance can be placed on the words and S 6 of the U P General Clauses Act 1904 shall apply upon such cesser of application as if these enactments had been repealed by an Uttar Pradesh Act occurring in sub-sec (2) of S 94 of the Ordinance S 6 of the U P General Clauses Act would have had no application to the situation arising from the suspension of the operation of the Religious Endowments Act 1863 not being a case of repeal of an enactment These words were hence inserted merely to extend the application of S 6 of the General Clauses Act even though not applicable in terms to the provisions of sub-sec (2) of S 94 Thus the Religious Endowments Act 1863 was not repealed by the Ordinance and application by opposite parties under S 14 of Religious Endowments Act 1863 could not be deemed to be incompetent in law (Paras 8 9)

(C) Religious Endowments Act (20 of 1863), S 18 — Permission to file suit — Grant of — Court need not express its final opinion on controversies raised — His satisfaction that prima facie grounds exist for filing suit is sufficient (Para 11)

Rakesh Devedi for Revisionists R K Kakkar for Opposite Parties

ORDER — This revision is directed against an order allowing an application under S 18 of the Religious Endowments Act 1863 and granting permission to the opposite parties to file a suit for the reliefs mentioned therein

2 The first contention raised by the applicants was that the aforesaid Act was not applicable to the religious endowments which came into existence after 1863 In the present case the endowment came into existence long after 1863 This question was referred by the learned single Judge who first heard this revision to a five Judge Full Bench which has by its judgment dt April 17 1984 unanimously answered the question in the affirmative The opinion expressed is that Ss 14 and 18 of the Act apply also to religious endowments created after 1863 and consequently the said Act was rightly applied to the instant case The Full Bench decision therefore concludes the first point

3 The second question which was raised before me by the learned counsel was that the Religious Endowments Act 1863 was repealed by the U P Public Charitable and Hindu Religious Institutions and Endowments Ordinance 1976 The Ordinance lapsed in course of time and was not reenacted by the Legislature It was urged that the effect of the repeal of the Religious Endowments Act 1863 notwithstanding the fact that the Ordinance by which it was repealed had lapsed was that the Religious Endowments Act 1863 stood abrogated and completely wiped out from the Statute Book The application made by the opposite parties under Section 14 of the Act on Dec 11 1974 must hence be deemed to be incompetent in law

4 I am unable to agree It is true that the repeal of a repealing Act does not automatically revive the repealed Act on the repeal of the repealing Act (See S 7 of the General Clauses Act) In the present case however the Religious Endowments Act was not repealed by the Ordinance of 1976 The Ordinance merely provided that the Religious Endowments Act 1863 shall cease to apply to charitable institutions and Hindu Religious institutions and endowments thereof Section 94 of the Ordinance which provides for repeals and savings in so far as it is relevant for the purpose of this case provides

94 Repeals and Savings

(1) The Uttar Pradesh Hindu Public Religious Institutions (Prevention of Dissipation of Properties) (Temporary Powers) Act 1962 is hereby repealed

(2) Except as provided in sub-sec (3) the enactments mentioned below shall cease to apply to charitable institutions and Hindu Religious Institutions and the Endowments thereof to which this Ordinance applies and

S 6 of the U P General Clauses Act 1904 shall apply upon such cesser of application as if these enactments have been repealed by an Uttar Pradesh Act

(a) The Religious Endowments Act 1863

(b) and (c)

(d) Sections 92 and 93 of the Civil P C 1908

(3) Notwithstanding such repeal

(a) and (b)

(c) all proceedings pending before the State Government any officer or authority or a trustee under the provisions of the repealed Acts at commencement of this Ordinance shall subject to the provisions of Cl (d) abate

(d) any remedy by way of right of suit, appeal or application which is provided by the Ordinance shall be available in respect of proceedings under the repealed Acts pending at the commencement of this Ordinance as if the proceeding in respect of which the remedy is sought had been instituted under this Ordinance and such proceeding shall be continued from the stage at which they are so pending by the appropriate authority under this Ordinance

5 It is significant that sub-sec (1) of S 94 uses the expression repealed the legal and interpretative connotation of which is well known whereas sub-sec (2) of the Ordinance provides merely that the Religious Endowments Act shall cease to apply to charitable institutions

6 The repeal of an enactment has the effect of obliterating the Statute completely from the records of Parliament so to say It wipes out the enactment from the Statute Book as if it never existed The Legislature may be presumed to be aware of the legal consequences of the repeal of an enactment Consequently when the Legislature specifically refrained from using the expression repealed in sub-sec (2) of S 94 while using the same in sub-sec (1) of S 94 it must follow without question that the legislative intent was not to repeal the Religious Endowments Act 1863 It was on the contrary to allow the Act to remain on the Statute Book in spite of the Ordinance of 1976 Only its operation had been suspended temporarily on account of the promulgation of the Ordinance

7 With the expiry of the Ordinance, therefore the temporary cloud which was cast on the Religious Endowments Act stood removed and it again came into operation

8 Learned Counsel however attempted to seek some assistance from the words and S 6 of the U P General Clauses Act 1904 shall apply upon such cesser of application as if these enactments had been repealed by an Uttar Pradesh Act occurring in sub-sec (2) of S 94 of the Ordinance I am however clearly of the opinion that these words lend no support to the arguments S 6 of the U P General Clauses Act would have had no application to the situation arising from the suspension of the operation of the Religious Endowments Act 1863 not being a case of repeal of an enactment These words were hence inserted merely to extend the application of S 6 of the General Clauses Act even though not applicable in terms to the provisions of sub-sec (2) of S 94

9 In any case reading S 94 as a whole I have not the least hesitation in holding that the Religious Endowments Act 1863 was not repealed by the Ordinance Consequently the second submission is also rejected The decisions cited by the learned counsel on the effect of the repeal of a repealing Act are of no assistance and hence are not being dealt with elaborately

10 Learned counsel lastly urged that S 18 of the Religious Endowments Act enjoins the Court to determine the question whether permission should be granted or not The order passed by the Court below does not indicate that he has applied his mind to the case and determined the issue

11 I am unable to agree The Court below has held after examining the allegations made in the application and the reply of the applicant that there are sufficient prima facie grounds for the institution of the suit warranting that permission should be granted The Court below was not required to express any final opinion on the controversies raised by the parties on the merits of this respective claims All that he had to do was to satisfy himself upon evidence whether there were sufficient and prima facie grounds for the institution of the suit The Court below has held that there are such grounds No jurisdictional error has been committed by the Court below in this behalf

so as to persuade this Court to interfere in a revision under S 115 of the Code of Civil Procedure

In the result the revision fails and is dismissed but I make no orders as to costs

Petition dismissed

1986 ALL L J 166

N N MITHAL J

Sardar Surendra Mohan Puri Appellant v Sardar Surendra Singh Respondent

Second Appeals Nos 123 of 1977 and 429 of 1978 D/ 18 7 1985 *

(A) U P Muslim Waqfs Act (16 of 1960), Ss 2(1) and (3), 49 A (as amended in 1971) — U P Muslim Waqfs (Amendment) Act (28 of 1971), S 19 — Transfer of waqf property — Effect of Amending Act — Transfer made after commencement of Amendment Act without permission of Board — It would be hit by prohibition contained in S 49 A — S 19 of Amendment Act does not apply

Where certain property belonging to Waqfs Alal aulad was transferred by the Mutawalli after enforcement of Amendment Act 1971 without the permission of the Board the transfer is violative of S 49 A of the Act (Para 13)

The amended provisions despite being prospective will apply to those Waqfs alal aulad also which were hitherto not governed by the Waqf Act being excepted u/s 2(3) Merely because an Amending provision is prospective in operation it does not mean that it would not apply to that class of persons or bodies which did not come within its ambit before and to which the Act became applicable only after the amendment Even if some Waqfs alal aulad were exempt from the operation of Waqf Act under S 2(3) on its deletion by U P Act No 28 of 1971 by virtue of S 2 the Act would become applicable to all Waqfs irrespective of whether they were earlier covered by the Waqf Act or not Once the saving in S 2(3) is withdrawn the Act becomes applicable without exception to all waqfs This has no relation with the date of creation or establishment of any waqf but to the date from which the Act will begin to apply From the date of enforcement of the U P Act 28 of 1971 the Waqf Act of 1960 would become applicable to all kinds of waqfs whether or not they were governed by the Waqf Act prior to that date Therefore it must follow that all the amended provisions of the Waqf Act would be applicable to the waqf in question also as from S 11 1971 including S 49 A thereof A bare perusal of S 19 will show that it does not apply to cases to which S 49 A applies Its applicability is confined to cases covered under three other sections mentioned therein In any case even this provision can only save a suit or proceeding instituted by the Board or such judgment or decree which had been obtained before the commencement of the amending Act (Para 13)

(B) U P Muslim Waqfs Act (16 of 1960), S 19(2)(o) — Appointment of Mutawalli — District Judge has no power to make any departure from the line of succession set out in deed of waqf and to appoint any mutwalli against wishes of Wakif (Para 16)

Cases Referred Chronological Paras

1984 All LJ 655 (1984) 2 SCC 582 AIR 1984 SC 1376	6
AIR 1984 SC 87 (1984) 1 SCC 206	6
AIR 1984 SC 1415 (1984) 3 SCC 603	10

Rajesh Tandon for Appellant S S Bhatnagar for Respondent

JUDGMENT — These are two appeals arising out of two different suits in which the plaintiff was the same and a common question of law is involved in both of them

2 In second appeal No 123 of 1977 facts were that a waqf had been created by Smt Badrunnisa in 1930 According to the scheme of succession of Mutwalli as laid down in the deed of waqf on the death of the Wakif one Smt Ejazatunnisa became its Mutwalli However she offered to surrender her mutwallship rights in favour of Shamshad Ahmad and obtained order dt 25th April 1967 from the District Court permitting this change whereafter Shamshad Ahmad became

*Against judgment and decree of Ram Chandra, 1st Addl Dist and Sessions Judge Bareilly D/ 13 11 1976

the mutwalli On 1 6 1971 he obtained permission from the District Judge to transfer the disputed waqf property in favour of the plaintiff Acting upon that permission a sale deed was executed on 14th Feb 1972 A suit by the waqf was then pending against the defendant and with the leave of the Court the present plaintiff was substituted for the waqf

3 The defendant contested the appointment of Shamshad Ahmad as Mutwalli being opposed to the directions in the waqf deed as also the validity of the transfer in plaintiff's favour as being violative of S 49 A of the amended U P Muslim Waqf Act 1960 This suit by the plaintiff was dismissed by the lower appellate Court against which he had come up in appeal

4 In Second Appeal No 429 of 1979 however the facts are almost similar but for minor difference in a few dates and I do not propose to set out the facts again here The suit has been decreed by the Court below and it is the defendant who has come up in appeal The very same questions arise in this appeal also i e about the validity of Shamshad Ahmad's appointment and of the sale deed

5 Admittedly U P Muslim Waqfs Act 1960 was enacted to regulate and control the working and management of waqfs in U P and waqfs of all kinds came under its purview barring those class of Waqfs alal aulad which were saved by S 2(3) of the Act By U P Act No 28 of 1971 which was enforced from 5th Nov 1971 the Waqf Act was amended whereby this sub-cl (3) was deleted

6 According to the appellant the amending Act is prospective in operation and does not retrospectively affect those waqfs to which the present Act did not initially apply In support of his submission he placed reliance on Punjab Tin Supply Co v Central Govt (1984) 1 SCC 206 (AIR 1984 SC 87) particularly on the observations made by the Supreme Court in para 17 of the report which says that all laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive He also seeks support from Bimla Devi v First Addl District Judge (1984) 2 SCC 582 (1984 All LJ 655) where also it was laid down by the Supreme Court that the substantive rights conferred by any law cannot be taken away by an amendment of that provision with retrospective effect

7 The contentions of the appellant may be summarised as under —

1 Amendment Act of 1971 applies only to those waqfs which come into existence after the date of its enforcement i e 5 11 1971 and not to pre existing waqfs

2 Alternatively those waqfs which were exempted from the operation of U P Muslim Waqfs Act 1960 would in any case continue to remain so exempt even after the coming into force of U P Act 28 of 1971

3 Amended provisions can apply only prospectively and the transfer in plaintiff's favour is saved by S 19 of the Amending Act and

4 S 49 A is not a bar to the permission obtained by the plaintiff

8 The first two of these contention are inter connected and deserve treatment together S 2(1) of the U P Muslim Waqfs Act 1960 (for brevity sake referred hereafter as the Waqf Act) provides that the Act shall apply to all waqfs irrespective of whether those were created before or after the commencement of that Act subject to such savings as were made in the Act Therefore on the enforcement of this Act on 3 9 1960 all waqfs came under its purview except those for which there was a saving made in the Act itself i e those Waqfs alal aulad as are described in sub-cl (3) of S 2

9 What is contended by the respondent and in my opinion rightly so is that the amended provisions despite being prospective will apply to those Waqfs alal aulad also which were hitherto not governed by the Waqf Act being excepted u/s 2(3) I have no hesitation in agreeing to the submission Merely because an Amending provision is prospective in operation it does not mean that it would not apply to that class of persons or bodies which did not come within its ambit before and to which the Act became applicable only after the amendment Even if some Waqfs alal aulad were exempt from the operation of Waqf Act under S 2(3) on its deletion by U P Act No 28 of 1971 by virtue of S 2 the Act would become

applicable to all Waqfs irrespective of whether they were earlier covered by the Waqf Act or not. Once the saving in S. 2(3) is withdrawn the Act becomes applicable without exception to all waqfs. This has no relation with the date of creation or establishment of any waqf but to the date from which the Act will begin to apply.

10 Appellant then relied on a Supreme Court decision in Punjab University v. Subhash Chandra (1984) 3 SCC 603 (AIR 1984 SC 1415). This case instead of being helpful to the appellant goes contrary to his line of submissions. It lays down that a rule amended prospectively would not be considered to have an element of retrospectivity merely because it is applicable also to those to whom pre-amended rule was applicable. In that case the petitioner had joined the Medical College which was then governed by certain statutes of the University regarding grant of grace-marks at the rate of one per cent of the aggregate. While he was still in the Medical College this rule was amended. Accordingly the grace marks could be awarded under the amended statute only at the rate of 1/ of maximum marks assigned to each subject instead of the aggregate. The validity of this rule was questioned but the Supreme Court upheld the same and ruled that it would apply to all students whether admitted before or after the amendment though only prospectively. The same is the position here. The amended Act of 1971 will apply prospectively irrespective of the fact whether the waqf was covered by the Act before the amendment or not.

11 As a consequence therefore from the date of enforcement of the U.P. Act 28 of 1971 the Waqf Act of 1960 would become applicable to all kinds of waqfs whether or not they were governed by the Waqf Act prior to that date. Once we reach this conclusion it must follow that all the amended provisions of the Waqf Act would be applicable to the waqf in question also as from 5.11.1971 including S. 49 A thereof.

12 Section 49 A of the Act lays down restrictions on the rights of Mutwalli to transfer immoveable property belonging to the waqf and no transfer of immoveable waqf property by way of sale, gift, mortgage or exchange would be valid without the previous sanction of the waqf Board. Although permission to transfer had been obtained from the District Judge on 1.6.1971 i.e. prior to the enforcement of the amending Act yet by that time no sale deed in fact had been executed which was admittedly done after 5.11.1971. The question arises whether such a sale deed would be hit by S. 49 A. According to Sri Rajesh Tandon S. 49 A will not come in the way of the transferee as this would be saved by S. 19 of U.P. Act No. 28 of 1971 which may be extracted below :—

Section 19

Transitory provision — Nothing in S. 49 B, S. 57 A or S. 69 A inserted in the principal Act by this Act —

(a) shall affect any suit or other proceedings instituted by the Board in a Civil Court for any relief mentioned in the said sections before the commencement of this Act and any such suit or proceedings may be continued as if this Act had not come into force or

(b) affect the validity or executability of any judgment or decree passed by any Court before the commencement of this Act.

13 A bare perusal of the section will show that it does not apply to cases to which S. 49 A applies. Its applicability is confined to cases covered under three other sections mentioned therein. In any case even this provision can only save a suit or proceeding instituted by the Board or such judgment or decree which had been obtained before the commencement of the amending Act. In this case neither a suit nor a proceeding at the instance of the Board was pending at that time nor any judgment or decree had been obtained by the Board before the commencement of the Act. S. 19 of the U.P. Act 28 of 1971 therefore cannot come to plaintiff's rescue. A mere permission to transfer the waqf property obtained by the Mutwalli from the district Court does not per se amount to transfer of the property. It only enables the Mutwalli to execute the sale deed. Until the deed is executed according to law no transfer can be effective and if after 5.11.1971 any such transfer is affected it would be wholly in violation of S. 49 A of the amended Waqfs Act. It is therefore obvious that the transfer in favour of the plaintiff which was made after 5.11.1971 would be hit by the

prohibitions contained in S 49 A for want of prior permission from the Waqf Board in this behalf

4 As a last resort Sri Tandon sought to urge that the defect if any on the above nature stood cured during the pendency of the appeal in this Court He submitted that the Waqf Board had initiated proceedings against the plaintiff under S 49 B and on cause being shown by the plaintiff the notices were withdrawn It is therefore urged that this should be deemed to be the permission for transfer so as to cure any existing lacuna in the validity of the sale deed The argument has no merit S 49 B is a special remedy designed to invest the Waqf Board with powers to protect waqf property against being dealt with in a manner contrary to the provisions of the Act It has been given the power to launch an enquiry and after hearing the party concerned to adjudicate upon the rights pertaining to the property The Board can have its order enforced with the aid of the Collector This section however does not give any authority to the Board to validate any sale deed executed in violation of the provisions of the Act All that the Waqf Board can do is to discharge its notice and to refrain from taking any action as contemplated under S 49 B of the Act However by mere discharge of its notice it does not follow that the sale deed executed in contravention of S 49 A would stand validated Since the matter is now before the Court it alone has the jurisdiction to decide the question of validity of the transfer

15 In view of what I have said above I must hold that the sale deed executed by Shamshad Ahmad Mutwalli of the waqf in plaintiff's favour was invalid and ineffective being violative of the provisions of S 49 A of the Act

16 In the light of the view that I have taken above it is not necessary for me to decide the other point which was raised by Sri G N Varma learned counsel appearing for the appellant in Second Appeal No 429 of 1978 about the validity of appointment of Sri Shamshad Ahmad as Mutwalli of the waqf Suffice it to say that the District Judge has no power to make any departure from the line of succession set out in the deed of waqf and to appoint any mutwalli against the wishes of the Waqif

17 In view of the above discussions I find no force in Second Appeal No 123 of 1977 which deserves to be dismissed while Second Appeal No 429 of 1978 merits to be allowed I will prefer not to make any order as to costs in the two appeals The appeals are disposed of accordingly

18 Sri Rajesh Tandon has orally prayed that a copy of the judgment be provided to him within a week Office will supply necessary copy within a week on an application made in that behalf on payment of charges according to rules

Order accordingly

1986 ALL L J 169

S D AGARWALA J

Ram Swaroop Petitioner v District Judge Banda and others Respondents

Civil Misc Writ No 2874 of 1983 D/ 24-1 1985

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1 of 1961, Ss. 5(6) and (7), S 12A Proviso (d) -- Determination of surplus land -- Benefit of Proviso (d) to S 12-A is available only when transfer has been ignored under sub-sec (6) or a partition has been ignored under sub-sec. (7) of S 5 and not otherwise (Paras 8, 9)

Cases Referred Chronological Paras

1983 All LJ 1297 10

K S Chauhan for Petitioner Raja Ram Sheohare Standing Counsel for Respondents

ORDER -- This is a petition under Art 226 of the Constitution This petition arises out of proceedings under the U P Imposition of Ceiling on Land Holdings Act 1960 (hereinafter referred to as the Act)

2 Ram Swaroop the petitioner and Dwarika Prasad, respondent.3 are real brothers Proceedings under the Act were taken against the tenure holder Dwarika prasad by an order dt 20th Oct 1975 This order was produced before me by the respondents with the consent of the petitioner The land of Dwarika Prasad

was declared surplus to the extent of 3 91 hectres of irrigated land Since at the time when this order was passed Dwarika Prasad did not appear the plots in two Khatas namely Khatas Nos 81 and 375 were declared surplus Thereafter on 6th July 1978 Dwarika Prasad moved an application under S 13-A of the Act by virtue of which he gave his choice in respect of the land which was declared surplus This application was initially rejected by the Prescribed Authority Thereafter an appeal was filed The appellate Court by an order dt 31st May 1979 remanded the case to the prescribed authority for considering the application of Dwarika Prasad in regard to the choice given by him in accordance with law After remand initially the Prescribed Authority rejected the application for choice but subsequently the order was reviewed and by another order dt 25th Nov 1980 the choice given by Dwarika Prasad was accepted After this was accepted by the Prescribed Authority the petitioner filed an application on 23rd April 1981 stating therein that in fact the choice which had been given by Dwarika Prasad related to the plots which had come to the share of the petitioner by virtue of a partition said to have taken place on 7th June 1974 This partition was by virtue of a compromise arrived at between the parties This application of Ram Swaroop was rejected on 28th Jan 1982 Against the order rejecting the application dt 28th Jan 1982 the petitioner filed an appeal before the District Judge Banda. The appeal was also dismissed on 10th Dec 1982 The petitioner has now challenged the order dt 28th Jan 1982 and 10th Dec 1982 by means of the present petition

3 I have heard the learned counsel for the parties

4 Learned counsel for the petitioner has contended that in accordance with S 12 A(d) of the Act the Prescribed Authority as well as the appellate Court acted illegally in accepting the choice of the tenure holder Dwarika Prasad in respect of the plots which were the subject of partition dt 7th June 1974 and as such the authorities have erred in holding that the said partition was void in the eye of law The argument of the learned counsel is that firstly the plots which were not the subject matter of partition, should have been taken towards the surplus land and if that was not sufficient then alone the plots which were the subject matter of partition could have been taken towards the surplus land

5 I have heard the learned counsel for the respondent Dwarika Prasad who has rebutted the contention raised on behalf of the respondent

6 Section 5 of the Act provides that on and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act 1972 no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh any land in excess of the ceiling area applicable to him The Amendment Act of 1972 came into effect from 8th June 1973 The effect of S 5 consequently is that after 8th June 1973 no tenure holder is entitled to hold land in excess of the ceiling area available to him Sub-sec (7) of S 5 which is relevant for the purposes of determining the controversy in the present petition relates to partition which might have taken in respect of the land belonging to the tenure holder It provides that in determining the ceiling area applicable to a tenure holder any partition of land made after the twenty fourth day of Jan 1971 which but for the partition would have been declared surplus land under this Act shall be ignored and not taken into account A proviso has been added in which in certain circumstances the partition though it may have taken place after the said date would still be recognised as a valid partition for the purposes of determining the ceiling area

7 Section 12 A of the Act laid down the principles which would be applicable when an application is made by a tenure holder It has been provided that as far as possible the Prescribed Authority shall accept the choice given by a tenure holder This power is subject to certain provisos Proviso (d) is relevant for the purposes of the present case It provides as under

12 A(d) Where any person holds land in excess of the ceiling area including land which is the subject of any transfer or partition referred to in sub-sec (6) or sub-sec (7) of S 5 the surplus land determined shall as far as possible be land other than which is the subject of such transfer or partition and if the surplus land includes any land which is the subject of such

transfer or partition the transfer or partition shall in so far as it relates to the land included in the surplus land be deemed to be and always to have been void and —

(ii) it shall be open to the transferee to claim refund of the proportionate amount of consideration if any advanced by him to the transferor and such amount shall be charged on the amount payable to the transferor under S 17 and also on any land retained by the transferor within the ceiling area which shall be liable to be sold in satisfaction of the charge notwithstanding anything contained in S 153 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950

(iii) any party to the partition (other than the tenure holder in respect of whom the surplus land has been determined whose land is included in surplus land of the said tenure holder shall be entitled to have the partition re opened

8 From Proviso (d) it is clear that if a person holds land in respect of the ceiling area including land which is the subject of any partition referred to in sub-sec (6) or sub-sec (7) of S 5 the surplus land determined shall as far as possible be land other than land which is the subject of partition and if the surplus land includes any land which is the subject of such partition the partition shall in so far as it relates to the land included in the surplus land be deemed to be and always to have been void. The words transfer or partition referred to in sub-secs (6) and (7) of S 5 are significant It is only when a transfer has been ignored under S 5(6) or similarly a partition has been ignored under sub-sec (7) that the Legislature contemplated that in such a case the surplus land determined shall as far as possible be land other than the land which is the subject of transfer or partition

9 In the instant case it is apparent from the order dt 20th Oct 1975 by which the land was declared surplus that the land in dispute was not land which was a subject matter of partition which had been ignored by the Prescribed Authority and as such Proviso (d) in terms does not apply and no benefit can be taken by the petitioner of the Proviso

10 Learned counsel for the petitioner has relied upon a decision of this Court in Jogendra Singh v State of Uttar Pradesh 1983 All LJ 1297 This case relates to a case of transfer Hon'ble Mehrotra J (as he then was) after examining all the authorities came to the conclusion that where a land has been transferred to a person and which has been ignored under S 5(6) of the Act the transferee is entitled to see that as far as possible the said land be not declared as surplus land of the tenure holder In the case of Jogendra Singh v State of Uttar Pradesh (supra) the transfer took place on 28th Jan 1972 and this transfer was ignored under S 5(6) of the Act Since it was a transfer which was ignored under S 5(6) of the Act on the interpretation put by him proviso (d) of S 12 A of the Act would clearly apply The petitioner cannot take benefit of the principles laid down in the case of Jogendra Singh v State of Uttar Pradesh (supra) as that was not a case where the provisions of S 5(6) of the Act were not applicable In view of the above I am of the opinion that it cannot be said that the view taken by the Prescribed Authority or the appellate court was in any way manifestly erroneous

11 Learned counsel for the petitioner in the end urged that on 26th Dec 1963 Dwarka Prasad had filed a Partition Suit No 16 under S 176 of the U P Zamindari Abolition and Land Reforms Act and a decree was passed on 1st June 1964 In the counter affidavit it has been stated that the consent decree dt 1st June 1964 was not given effect to and for this reason the entire land was considered to be the tenancy of Dwarka Prasad This plea which has been taken now by the petitioner was not taken before the courts below neither any document has been filed by the petitioner in relation to this plea before the courts below This plea is an afterthought and in the circumstances the petitioner cannot be permitted to take up this plea at this late stage now under Art 226 of the Constitution which is based on disputed questions of fact

12 In the result the petition fails and is accordingly dismissed but in the circumstances of the case the parties are directed to bear their own costs

Petition dismissed

1986 ALL L J 172

K P SINGH J

Ramgarh Farm and Industries Ltd. Kashipur Petitioner v State of Uttar Pradesh and others Respondents

Civil Misc Writ Petn No 1830 of 1977 D/ 17 1 1985

U P Public Premises (Eviction of Unauthorised Occupants) Act (22 of 1972), S 9 — Public Premises (Eviction of Unauthorised Occupants) Rules (1973), R 9 — Appeal — Opposite party as well as person in actual possession ordered to be evicted under S 5 — Such person in actual possession is "person aggrieved within meaning of R 9 and has right of appeal against S 5 order AIR 1975 SC 2092 Rel on (Paras 12, 13)

Cases Referred Chronological Paras

AIR 1975 SC 2092 12

G N Verma for Petitioner Standing Counsel for Respondents

ORDER — This writ petition has been directed against the judgment of Shri A B Mathur District Judge Nainital dt 20 4 1977 in Eviction Appeal No 332 of 1975 Ramgarh Farm and Industries Ltd Kashipur District Nainital versus State of U P and another

2 It appears that Eviction Case No 148 of 1972 73 State of U P v Escorts Farms Ramgarh and Industries Ltd Kashipur District Nainital was started under S 5(1) of the U P Public Premises (Eviction of Unauthorised Occupants) Act 1972 It has been alleged that notice under S 4 of the aforesaid Act was served upon the opposite party mentioned in the above noted eviction case The present petitioner being in actual possession over the disputed land has contested the claim of State of U P and had asserted that the petitioner had become sirdar of the disputed land and that his possession was not unauthorised therefore the proceeding should be dropped The prescribed authority through its order dt 16 12 1974 passed the following order —

Now therefore in exercise of the powers under sub-sec (1) of S 5 of the U P P P (E U O) Act 1972 I hereby order the said O Ps as well as others who are in occupation of the said public premises or any part thereof to vacate the said public premises within thirty days of the publication of this order In the event of refusal or failure to comply with this order within the period specified above the said O P and all other persons concerned are liable to be evicted from the said public premises if need be by the use of such force as may be necessary (Emphasis is mine)

3 Against the judgment of the prescribed authority the petitioner preferred an appeal which has been dismissed by the appellate court through its order dt 20 4-1977 Against the judgment of the appellate court the petitioner has approached this court under Art 226 of the Constitution

4 The learned counsel for the petitioner has contended before me that the appellate court has patently erred in holding that the appeal at the instance of the petitioner was not a competent appeal and therefore the same has been rejected

5 Second contention raised on behalf of the petitioner is that the subordinate authorities have patently erred in holding the possession of the petitioner over the disputed land as unauthorised

6 Last contention raised on behalf of the petitioner is that a declaratory suit between the parties is pending before the revenue courts hence the summary proceeding for eviction of the petitioner is wholly unjustified in the circumstances of the present case

7 The learned counsel for the State of U P has submitted in reply that the impugned judgments do not suffer from any patent error of law hence they need not be interfered with by this Court He has emphasized that the possession of the petitioner over the disputed land is unauthorised and that he was rightly evicted from the disputed land It has also been suggested that there is no legal bar for proceeding against the petitioner in a summary proceeding when the conditions mentioned in the Act are satisfied and the petitioner is liable to eviction

8 I have considered the contentions raised on behalf of the parties Section 5 of U P Act No 22 of 1972 reads as below —

(1) If after considering the cause if any shown by any person in pursuance of a notice under S 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard the prescribed authority is satisfied that the public premises are in unauthorised occupation the prescribed authority may make an order of eviction for reasons to be recorded therein directing that the public premises shall be vacated on such date as may be specified in the order by all persons who may be in occupation thereof or any part thereof and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication under sub-section (1) the prescribed authority or any other officer duly authorised by the prescribed authority in this behalf may evict that person from and take possession of the public premises and may for that purpose use such force as may be necessary

Section 9 of U P Act No 22 of 1972 reads as below —

An appeal shall lie from every order of the prescribed authority made in respect of any public premises under S 5 or S 7 to an appellate Officer who shall be the District Judge of the District in which the public premises are situate or such other judicial officer not below the rank of Civil Judge as the District Judge may designate in this behalf

(The rest of the Section is not material for considering the question involved in the present writ petition)

Section 10 of the U P Act 22 of 1972 reads as below

Save as otherwise expressly provided in this Act every order made by a prescribed authority or appellate officer under this Act shall be final and shall not be called in question in any original suit application or execution proceeding and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act

9 The bare perusal of the operative portion of the order of the prescribed authority dt 16 12 1974 leads to an inference that the petitioner shall be evicted from the disputed land even in Eviction Case No 148 of 1972 73 which was started against the Escorts Farm Ramgarh and Industries Limited Kashipur District Nainital because the petitioner is in actual occupation of the disputed land

10 To my mind the appellate court has patently erred in holding that the appeal filed by the petitioner was not competent The appellate court has expressed itself in para 2 of its judgment as below —

The present appeal has however been filed not by Escorts Farm Ramgarh and Industries Ltd. to whom the notice under S 4(1) of the Act was given and against whom the order of eviction has been passed but by Ramgarh Farm and Industries Ltd The evidence would show that the two are separate articles and the difference is not one of name alone

11 In the last but one para of the impugned judgment also the appellate court has expressed itself as below

What is most fatal to this appeal however is that the notice under S 4(1) of the Act was issued to the Escorts Farm and the order of eviction has also been passed against the said Escorts Farm The Escorts Farm did not file any objection to this notice and is not before us in appeal either The appellant was not entitled to file its objection before the Prescribed Authority and it is equally that it is not competent to file the present appeal

12 In my opinion the approach of the appellate court is patently erroneous to the problems involved in the case In pursuance of the order of the prescribed authority the petitioner was liable to be evicted from the disputed premise even by use of force and as every order is appealable under S 9 of the Act I think that the appellant had a right to prefer an appeal and his appeal was erroneously dismissed on the ground that it was not competent The order passed by the prescribed authority or the appellate court under the Act shall be final and cannot be called in question in any original suit application or execution proceedings and no injunction can be granted by any court or other authority in respect of action taken or to be taken in pursuance of any power conferred by or under this Act I

think that the appellate authority has patently erred in observing that the appeal at the instance of the petitioner was not competent By the order passed by the prescribed authority the petitioner being in actual occupation of the disputed premises was liable to be evicted Therefore it has a right to approach the appellate court for redress The impugned judgment of the appellate court deserves to be quashed on this short ground Rule 9 under the provisions of U P Act No 22 of 1972 provides that an appeal under S 9 may be preferred by any person aggrieved by an order under S 5 or S 7 In AIR 1975 SC 2092 Bar Council of Maharashtra v M V Dabholkar has construed the term person aggrieved as below at p 2098 para 27 —

Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved The meaning of the words a person aggrieved may vary according to the context of the statute One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him

13 From the above extract it is apparent that the petitioner was really aggrieved by the order of the prescribed authority as it was liable to be evicted at the hands of the State of U P by use of necessary force The appellate court has failed to consider this aspect of the matter while observing that the appeal at the instance of the petitioner was not maintainable Therefore the order of the appellate court is patently erroneous and deserves to be quashed

14 The finding of the appellate court that the possession of the petitioner over the disputed land was unauthorised is also not quite correct in the circumstances of the present case It has not been seriously disputed before me that the disputed land was intended to be allotted to the petitioner but finally lease deed has not been executed in favour of the petitioner for some reason The question arises as to how and when the possession of the petitioner over the disputed land became unauthorised The petitioner has filed declaratory suit about its sirdari right in the disputed land before the revenue court and that matter is pending between the parties Therefore it has become necessary to direct the appellate court to re examine the claim of the parties with regard to unauthorised occupation of the petitioner over the disputed land

15 Section 4(2)(b) of U P Act No 22 of 1972 requires notice to all persons concerned that is to say all persons who are or may be in occupation of or claim interest in the public premises to show cause if any against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issue thereof

(3) The prescribed authority shall cause the notice to be served either personally on all those persons concerned or by having it affixed on the outer door or some other conspicuous part of the public premises and in any other manner provided in the C P C 1908

16 It is not very clear whether any notice under S 4 was served upon the petitioner and whether the petitioner could be legally evicted in the case giving rise to the present writ petition The ends of justice demand that the appellate authority must address itself to the question whether the petitioner is liable to eviction if no notice contemplated by S 4 of the Act was served upon the petitioner

17 As regards propriety of summary proceeding for eviction of the petitioner when title-suit between the petitioner and the State of U P is pending before a revenue court it should also be specifically answered by the appellate court when the matter is taken up by it hereafter

18 In the result, the writ petition succeeds and the impugned judgment of the appellate authority dt 20 4-1977 in Eviction Appeal No 332 of 1975 Ramgarh Farms and Industries Ltd Kashipur v State of U P and another is hereby quashed and the appellate court is directed to re-examine the claims of the parties in the light of the observations made above There would be no order as to costs

Petition allowed

1986 ALL L J 175
= 1985 Cri LJ 2009
= AIR 1985 Supreme Court 1384

(From 1976 All W C 495)

S MURTAZA FAZAL ALI AND
A VARADARAJAN JJ

Criminal Appeals Nos 45 to 47 of 1977 D/
2 8 1985

State of U P Appellant v Ballabh Das and others etc etc Respondents

(A) Evidence Act (1 of 1872), Ss 3 and 5 — Interested witnesses — Evidence of — Rule regarding appreciation 1976 All WC 495, Reversed

There is no law which says that in the absence of any independent witness the evidence of interested witnesses should be thrown out at the behest of or should not be relied upon for convicting an accused What the law requires is that where the witnesses are interested the court should approach their evidence with care and caution in order to exclude the possibility of false implication The evidence of interested witnesses is not like that of an approver which is presumed to be tainted and requires corroboration but the said evidence is as good as any other evidence In a faction ridden village it will really be impossible to find independent persons to come forward and give evidence and in a large number of such cases only partisan witnesses would be natural and probable witnesses Once it is found by the court on an analysis of the evidence of an interested witness that there is no reason to disbelieve him then the mere fact that the witness is interested cannot persuade the court to reject the prosecution case on that ground alone 1976 All WC 495 Reversed. AIR 1975 SC 1985 Rel on (Paras 3 and 5)

(B) Criminal P C (2 of 1974), S 154 — FIR — Contents of 1976 All WC 495, Reversed

It is manifest that an FIR is not intended to be a very detailed document and is meant to give only the substance of the allegations made and therefore the absence of the mention of a lathi would not put the prosecution case out of court 1976 All WC 495 Reversed (Para 12)

Cases Referred Chronological Paras

AIR 1975 SC 1985 1975 Cri LJ 1739 3

FAZAL ALI, J — These appeals by special leave arise out of a judgment dated December 19 1975 of the Allahabad High Court by which the High Court reversed the conviction and sentence of the respondents for various offences under Ss 147 148 225/149 and 302/149 of the Indian Penal Code and acquitted them of all the charges

2 The prosecution case is fully detailed in the judgments of the Sessions Judge and the High Court and it is not necessary to cover the same grounds all over again We would mention only the broad outlines of the case presented by the prosecution before the trial court The unfortunate dispute in the instant case which resulted in the death of the deceased appears to have been the last step of a drama long in process as a result of a long standing enmity between the parties for the last twenty five years

3 It was contended on behalf of the appellant that the High Court erred in setting aside the conviction of the respondents on the ground that all the witnesses examined to prove the occurrence were interested persons and hence no reliance could be placed on their evidence To begin with we dare say that this was doubtless an absolutely wrong and perverse approach There is no law which says that in the absence of any independent witness the evidence of interested witnesses should be thrown out at the behest of or should not be relied upon for convicting an accused What the law requires is that where the witnesses are interested, the court should approach their evidence with care and caution in order to exclude the possibility of false implication We might also mention that the evidence of interested witnesses is not like that of an approver which is presumed to be tainted and requires corroboration but the said evidence is as good as any other evidence It may also be mentioned that in a faction ridden village as in the instant case as mentioned by us earlier it will really be impossible to find independent persons to come forward and give evidence and in a large number of such

cases only partisan witnesses would be natural and probable witnesses This Court in Badri v State of U P AIR 1975 SC 1985 (1975 Cri LJ 1739) made the following observations

In case where a murder takes place in a village where there are two factions bitterly opposed to each other it would be idle to expect independent persons to come forward to give evidence and only partisan witnesses would be natural and probable witnesses to the incident In such a case it would not be right to reject their testimony out of hand merely on the ground that they belonged to one faction or another Their evidence has to be assessed on its own merits

4 The High Court has cited this decision and seems to be aware of the view taken by this Court but has unfortunately misapplied this decision while dealing with the evidence produced by the prosecution

5 The dominant question to be considered in the instant case is whether the witnesses despite being interested have spoken the truth and are creditworthy Once it is found by the court on an analysis of the evidence of an interested witness that there is no reason to disbelieve him then the mere fact that the witness is interested cannot persuade the court to reject the prosecution case on that ground alone

6 The entire edifice of the prosecution in the instant case depends on the evidence of P Ws 1 5 8 and 14 We have perused their evidence and we are unable to find any serious infirmity or inherent improbability in their evidence

7 On a perusal of the judgment of the High Court it seems to us that it has dealt with other circumstances in a rather summary fashion but the central idea which weighed with the High Court while acquitting the accused was that as the eye witnesses were interested and not independent it was not safe to convict the accused On the other hand a perusal of the trial court s judgment clearly shows that each and every circumstance or criticism against the prosecution has been fully met with facts and figures The trial court has made a very elaborate and detailed analysis of the entire evidence before coming to the conclusion that the prosecution case was fully proved The High Court does not seem to have displaced the important circumstances referred to be relied upon by the trial court but has in a general way rejected the prosecution case The High Court seems to have relied firstly on the long standing enmity and secondly on certain discrepancies which are not of a very vital nature and which can be found in any criminal case This court has observed in its various decisions that the duty of the court is to separate truth from falsehood and the chaff from the grain

8 While rejecting the evidence of P Ws 1 5 8 and 14 on the ground that they were interested witnesses the High Court observed thus —

Having thus considered all these points raised on behalf of the appellants the vital question would be whether in these circumstances the statements of the eye witnesses should be believed The learned Sessions Judge seems to have concluded that there was nothing to show that these eye witnesses had any interest in falsely implicating the accused persons This remark of the learned Sessions Judge is contrary to his earlier observation according to which these eye witnesses were interested in the deceased and at least two of them namely Aditya Narain and Jokhai Das were hostile to the accused persons

xx xx xx

Having thus considered the entire evidence and the circumstances and probabilities we are of the opinion that because all the eye witnesses are interested persons and because they had not been able to relate a consistent and convincing story it would not be possible to arrive at a finding of conviction

9 In order to illustrate our point of view we may have to wade through parts of the findings given by the two courts The trial court after a very scientific marshalling of evidence observed thus

The position that follows is that from the statements of the eye-witnesses and Ramesh Chand Verma it is fully established that the occurrence took place on 13 6 74 at 5 p m There is no material on record to indicate that the occurrence took place in the night and in the absence of Aditya Naram Jokhai Das and others

10 As regards the recovery of Jareeb (Scale for measuring the field) and basta (bag) the trial court after consideration of the entire evidence came to the following finding

In view of the above I have absolutely no doubt as to the recovery of Jareeb (a scale for measuring the field) and basta (bag) by the investigating officer as alleged

11 As regards the snatching of pistol from Ghanshyam Das the trial court found that Aditya Naram may have snatched the pistol in the heat of the moment The learned Judge however pointed out that if the other assailants did not take back the pistol from Aditya Naram no element of improbability could be imported into this fact

12 The High Court has made capital of the fact that there were three lacerated wounds on the head of the deceased and under these wounds there was a long fissured fracture of frontal parietal and temporal bones and yet the prosecution case is that there was no assault by lathi It is manifest that if Ranjit Ram was assaulted with lathi by Salik Ram and Rajdhar (accused) and the post mortem report proved this fact then this fact conclusively shows that Ranjit Ram was also assaulted with lathi and the mere fact that the assault by lathi was not mentioned in the FIR would not be sufficient to dislodge this important fact It is manifest that an FIR is not intended to be a very detailed document and is meant to give only the substance of the allegations made and therefore the absence of the mention of a lathi would not put the prosecution case out of court

13 The High Court relied on the circumstance that the injury of P W 14 (Jokhat Das) must have been written by the Doctors at the instance of or under the influence of Shri Salig Ram Jaiswal Health Minister This is also a conclusion based on pure speculation It is true that Shri Salig Ram Jaiswal the Health Minister was admitted to T B Sapru Hospital on 27 4-74 and discharged on 30-5 74 From this the inescapable conclusion is that it cannot be said that the Doctors wrote false injury report of Jokhat Das

14 The High Court adversely commented regarding the number of shots fired at Ranjit Ram. This fact is clearly proved from the statement in the FIR that Brahma Das Ballabh Das and Ghanshyam Das took out pistols from the waist band of their dhotis and all of a sudden fired 6-7 times upon Ranjit Ram the pistol of Ghanshyam Das misfired and Ranjit Ram fell down and that Aditya Naram and others snatched the pistol from Ghanshyam Das We do not find any infirmity in this statement as rightly pointed out by the trial court The trial court has held that on a consideration of the material it had been established that at least three shots were suddenly fired out of which one shot misfired and the other two shots had injured Ranjit Ram We find no improbability in this part of the prosecution case which has been adversely commented upon by the High Court

15 We have given a few illustrations of the reasons given by the High Court for reversing the judgment of the trial court and any knowing person who examines these reasons will be convinced that merely because of certain omissions or contradictions the entire case cannot be thrown out

16 We have ourselves very carefully perused the judgment of the High Court and except for small discrepancies here and there we do not find any reason why the High Court should have interfered with the detailed and exhaustive analysis of the evidence made by the trial court which had the initial advantage of watching the demeanour of the witnesses while they were giving evidence We are therefore clearly of the opinion that judgment of the High Court is absolutely wrong and it has laid great importance on small or insignificant facts or discrepancies and was mainly influenced by the fact that no independent witness was examined by the prosecution about which we have already discussed above

17 For these reasons we are satisfied that this is not a case in which the view taken by the High Court can in any sense of the term be called reasonable This is a clear case where the High Court gravely erred in interfering with the judgment of the trial court

18 The next question for consideration is after having been convinced that the prosecution has proved its case beyond reasonable doubt, what is the sentence which

is to be imposed on the respondents? In the facts and circumstances of the case we feel that imposition of the extreme penalty of death is not called for and the ends of justice would be met by commuting the death sentence to imprisonment for life

19 Therefore we allow these appeals set aside the judgment of the High Court and convict all the accused under S 302/149 of the Indian Penal Code and sentence them to imprisonment for life In case the respondents are on bail, their bail bonds are hereby cancelled and they shall be taken into custody and sent to prison for serving out the sentences imposed

Appeals allowed

1986 ALL L J 178

= AIR 1985 Supreme Court 606

(From Allahabad)*

P N BHAGWATI AND R B MISRA JJ

Civil Appeal No 41 of 1980 D 21 12 1984

Ram Sumiran and others Appellants v D D C and others Respondents

Constitution of India, Art 226 — Civil P C (1908), O 9 R 9 — Writ petition — Abatement for failure to bring legal representatives of deceased respondent on record within time — Petitioners even though knew about death of respondent taking no steps to bring his L Rs on record for 6 years — Subsequent application for setting aside abatement — Held petitioners being persons from rural area application deserves to be allowed W P No 1980 of 1975, D/ 3 5 1983 (All) Reversed. [Para 1)

Mrs Urmila Kapoor Advocate for Appellants Mr Shakil Ahmed Syed Advocate for Respondents

JUDGMENT — The only ground on which the High Court has dismissed the writ petition is that it has abated as a whole against Respondents Nos 4 and 5 since it abated against Respondent No 5 on account of the legal representatives of Respondent No 5 not having been brought on record within a period of 90 days after the death of respondent No 5 which occurred on 21 11 1976 It is true that no steps were taken by the appellants for bringing the legal representatives of the deceased respondent No 5 on record for about 6 years even though according to respondent No 4 the appellants knew about the death of respondent No 5. But merely because no application was made by the appellants for bringing the legal representatives of the deceased respondent No 5 on record we do not think that in the circumstances of the present case that would be a valid ground for refusing to grant the application of the appellants for setting aside the abatement and bringing the legal representatives of the deceased respondent No 5 on record because the appellants are admittedly from the rural area and in a country like ours where there is so much poverty ignorance and illiteracy it would not be fair to presume that everyone knows that on death of a respondent the legal representatives have to be brought on record within a certain time The ends of justice require that the application for bringing the legal representatives of the deceased respondent No 5 should have been granted We accordingly allow the appeal set aside the order of the High Court and direct that the abatement if any shall be set aside and the legal representatives of deceased respondent No 5 shall be brought on record and the writ petition shall be remanded to the High Court for disposal according to law We may make it clear that in making this order we must not be presumed to have expressed any opinion on the merits of the controversy raised in the writ petition It will be for the High Court to decide the writ petition according to law We would request the High Court to dispose of the writ petition at a very early date and as far as possible before the end of February 1985 The ex parte order of stay made by us will stand vacated

Appeal allowed

---

*W P No 1980 of 1975 D/ 3 5 1983 (All)

1986 ALL L J 179

M WAHAJUDDIN J

Jamuna Ahir (deceased by L R s) and others Appellants v Ram Bali Singh and other Respondents

Second Appeal No 1793 of 1973 D/ 21 11 1984 *

(A) Civil P C (5 of 1908), O 6, Rr 17 and 7 — Pleadings — Party cannot file successive written statements

A party cannot file successive written statements Once a written statement has been filed in court only its amendment can be sought under O 6 R 17 if permissible (Para 5)

(B) Civil P C (5 of 1908), O 6, Rr 17 and 7 — Amendment taking contradictory plea by withdrawing admissions made — Not permissible (Para 5)

D P S Chauhan and B B P Singh for Appellants Faujdar Rai for Respondents

JUDGMENT — Besides seeking declara on concerning title to compensation and rehabilitation grant plaintiffs had sought certain more reliefs concerning injunction and declaration about some plot against some other set of defendants The Munsif dismissed the suit in toto The first appellate court however partly allowed the appeal and so far as the compensation and rehabilitation grant for the estate as per schedule appended to the plaint the suit for declaration was decreed in favour of the plaintiffs The contesting defendants affected by such decree have preferred this appeal

2 It is not in dispute that the property for which compensation and rehabilitation grant was determined and is claimed by the plaintiffs belonged to Hazari It is also not in dispute that qua Hazari s ancestors there were three branches one of Manbahal Singh to which Hazari belonged one of Agam Singh to which the plaintiffs belong and the third of Ganga Singh It is also not in dispute that Mahba S ngh was joint qua his descendants and Agam Singh & Ganga Singh had separated As would appear from the pedigree that was set up the plaintiffs are the nearest collaterals of Hazari and claimed to be entitled to the compensation and rehabilitation grant as such collaterals

3 The defendants appellants stand in this second appeal s that Lallu S ngh alias Gulab appellant No 2 is the son of the daughter of Hazari namely Dulari The further stand is that Smt Duja is the widow of Hazari s pre deceased s son Jai Raj and consequently it is they who would succeed to the property left by Hazari and not the plaintiffs who are collaterals I may further mention that there is no dispute that the property in respect of which compensation and rehabilitation grant is claimed was the coparcenary property of Hazari

4 The first point that would arise for consideration is whether Lallu Singh alias Gulab is the son of Hazari s daughter as to have any interest in the properties left by Hazari It is noteworthy that in the written statement that was filed by Lallu alias Gulab he admitted that he is not Hazari s daughter s son and further admitted that he has no interest in the property n suit Not only that a compromise was also later filed Appellant Lallu alias Gulab thereafter moved the application 141 C2 before the trial court itself for setting aside his earlier written statement as well as the compromise As stress was laid upon the averments of application 141 C2 I may refer to the same In the compromise 140 A filed by defendant Lallu alias Gulab and the plaintiffs jointly it was stated that the suit may be decreed against the defendant concerned and the defendant concerned and the plaintiffs inter se will bear their own costs and the defendant concerned is not the daughter s son of Hazari nor his mother was the daughter of Hazari and it was also stated that the plaintiffs are the Zamindars Bhumidhars of the plots in suit and they are entitled to the compensation and rehabilitation grant This compromise was duly verified before the court In the application 141 C2 it was simply stated that the applicant s mother Dulari, was the daughter of Hazari and the applicant is her son and is entitled to the entire property

*Against judgment and decree of Suresh Chandra Srivastava Addl Civil J Azamgarh D/ 30 5 1973

of Hazari Singh and before the date of the written statement the plaintiffs started contacting the applicant and got him under their influence and giving temptations obtained the signatures of the applicant on several papers and also secured verification before the court and under inducement according to the desire of the plaintiffs and pressure from them the applicant defendant acted on plaintiffs dictates and a fraud was played upon and the written statement in question was no filed by the defendant and as a result of fraud and collusion and the compromise is also not on independent advice hence the compromise be cancelled and the defendant be allowed to withdraw the written statement It is noteworthy that the application 141 C2 is silent concerning the particulars of fraud, while the law requires that the particulars of the fraud are to be specifically pleaded It is also silent as to how undue influence was exercised what was the inducement given to the defendant Lallu Singh, how the defendant Lallu Singh acted at the behest of the plaintiffs and so forth so on That being the position the finding of fact of the first appellate court that the compromise is binding upon the parties to the compromise and that the written statement and the admissions made therein cannot be withdrawn cannot be disturbed in second appeal I may also observe that from the materials on record also the stand taken by the applicant in application 141 C2 is not borne out The compromise was verified in presence of the court and any question of fraud or misrepresentation practised before the court would not arise In that compromise also the very admission made in the written statement were repeated and affirmed When that is the position the first appellate court was justified in its finding

5 It was argued that in any case the court should have allowed the filing of a fresh written statement I am unable to agree with such a stand Any party cannot file successive written statements Once a written statement has been filed in court only its amendment can be sought under O 6 R 17 C P C if permissible Firstly there was no amendment application as such and the prayer was for withdrawal of the earlier written statement and, secondly any amendment taking a contradictory plea by withdrawing the admissions made would also not be permissible in law

6 The learned counsel for the appellants then urged that as other reliefs claimed were disallowed the compromise would not fall under O 23 R 3 C P C I have considered such arguments and I do not find any force in it O 23 R 3 C P C clearly provides adjustment of a suit as a whole or any part and further lays down that the court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree accordingly It is also provided therein, where one party alleges and the other denies that adjustment or satisfaction has been arrived at the court shall decide the question Even if the findings of the first appellate court are not very express I have also dealt with the salient features and I find that the compromise was duly arrived at and also duly verified by the court and the application 141 C2 did not contain any details of the alleged fraud misrepresentation undue influence etc and the application 141 C2 could not find favour and had to be rejected and consequently the admiss on in the written statement will be binding upon Lallu Singh alias Gulab and the compromise also will be binding and Lallu Singh alias Gulab therefore not being the grandson of Hazari Lal would not have any interest in the compensation or rehabilitation grant

7 The next point that would arise for consideration is the interest of the widowed Hazari s daughter in law namely Duja It is a common ground that Jai Ram pre-deceased Hazari Of course after the amendment in 1937 widows have been given certain rights in the estate and even son s widow will have a right if the son pre-deceased the father But all such interest would be created only after amendment of 1937 In the present case Hazari died in 1922 as per death certificate (Ext 1) At that time the widow of the deceased or the widow of the pre-deceased son had no interest either limited or absolute in coparcenary property and consequently Hazari s widow and Hazari s son s widow could not have any interest in the landed property of Hazari As there were no other heirs in the direct line the collaterals namely the plaintiffs shall succeed to such interest

8 It was next urged that as the name of Duja was recorded when the Zamindari Abolition and Land Reforms Act came into

force and even earlier it is she who will be entitled to compensation and rehabilitation grant Reliance in this connection was placed upon S 32 of the U P Zamindari Abolition and Land Reforms Act in which it has been laid down that every entry in the record of rights prepared or revised under U P Act No 3 of 1901 for the previous agricultural year shall for purpose of assessment and payment of compensation under the Z A L R Act be deemed to be described correctly the right title and interest of an intermediary in the estate subject to exception under S 46 It would be found that under some subsequent sections procedure for draft compensation and calculation is provided and then Section 46 provides for publication of notice of the draft compensation assessment roll and service of copies and there is a provision for objection in certain regards only and S 48 provides for disposal and then Ss 49 and 50 follow later dealing with appeals Under S 46 the scope of objection is limited I may quote S 46(2) with the proviso —

Section 46(2) The notice under sub-section (1) shall call upon all persons interested including a person who claims that the name of the intermediary is in respect of any share or interest to which such person is entitled, entered in a representative capacity or in the capacity of the Karta of a Joint Hindu Family to appear and file objection upon such statements or roll within a period of two months

Provided that no objection on the ground that the intermediary is entitled to a greater or lesser share or part of the estate or is not entitled to any share or part thereof shall be entertained, except when it is on any grounds mentioned in the notice or is in pursuance of any or under S 32 or 33

Zamindari and proprietary rights touch title and title of such parties happened to be determinable by the civil court and keeping this in view S 34 was enacted laying down that nothing in S 32 and 33 or S 49 which rendered an order under S 48 to be a decree of the court, shall affect the right of any person to establish his claim in respect of any share or part thereof by due process of law in the court having jurisdiction It would, thus appear that S 32 concerning presumption S 33 and also Ss 46 to 49 are all overridden by S 34 and in the matters of right to any estate the person concerned has been given full liberty to go to the competent court of jurisdiction and have it determined. Proprietary rights being involved. Civil courts will be competent court and would be fully competent to determine the right title or interest of any party in an estate and consequently the right to compensation and rehabilitation grant also in respect of such an estate That being the position the civil court could determine the question and come to an independent finding irrespective of any recorded entries and S 32 of the U P Zamindari Abolition and Land Reforms Act will not come into play at all in such situation Arguments to the contrary have no force As regards rehabilitation grant it is paid to the person who is held to be entitled for compensation

9 The next point urged is that the suit was barred by time It was argued that the limitation will start running when Zamindari Abolition and Land Reforms Act came into force in view of S 32 Section 32 however would not be attracted at all. In fact limitation does not start only on grounds of a party being aggrieved about any record entry rather ever that entry would have no consequence where a suit is filed in civil court as has been expressly provided u/s 34 of the Zamindari Abolition and Land Reforms Act At the best the defendants could urge that the limitation may start running when the Compensation Officer has finally determined the matter u/s 48 of the U P Zamindari Abolition and Land Reforms Act But there is no material on record to show when that stage has reached and when was the matter finally determined by the Compensation Authority That being the position the suit cannot be time-barred Apart from that the compensation and rehabilitation grant as is urged by the respondents Counsel is with the Authorities itself and when that is the position it will be open to grant a declaration and the claim will not be time-barred

10 I therefore after considering various arguments urged do not find any force in this second appeal and this second appeal is dismissed with costs to the contesting respondents

Appeal dismissed

1986 ALL L J 182

(LUCKNOW BENCH)

K N MISRA J

Ram Sewak Petitioner v Dy Director of Consolidation and another Respondents

Writ Petn No 377 of 1976 D/ 19 10 1984

U.P Zamindari Abolition and Land Reforms Act (1 of 1951), S 182 A -- Land recorded as bunjar belonging to Gaon Sabha -- As land was a nala and a water logged area no Sirdari rights could be claimed therein and hence right asserted under a lease deed from the nagarpalika -- Said deed not duly attested or registered -- Held settlement officer erred in granting asami rights to the petitioner 1977 All WC 1 (FB) Rel on (Para 5)

Cases Referred Chronological Paras

1977 All WC 1 1978 Rev Dec 34 (FB) 4 5
1975 All LJ 684 1976 Rev Dec 316 3 5

P L Misra and H S Sahai for Petitioner
Hargur Charan Iqbal Fatima for Respondents

ORDER -- This writ petition is directed against the judgment and order dt 15 1 1976 passed by the Deputy Director of Consolidation Gonda by which he has maintained the basic year entry in the name of Gaon Sabha and has set aside the order dt 6-9 1971 passed by the Settlement Officer Consolidation by which the petitioner was ordered to be recorded Asami tenant

2 Briefly stated the facts of the case are as below --

The dispute in the present case relates to plot No 7021 with an area of 1 57 acres situate in village Balrampur Pargana and Tahsil Balrampur District Gonda This plot was recorded as Bunjar in the basic year khetauni and over an area of 40 acres the name of petitioner Ram Sewak was recorded in clause 5 Petitioner filed objection claiming to be Sirdar tenant of the land in dispute on the basis of the alleged deed dt 5 5 1952 granted by Balrampur Estate in his favour The case of the petitioner is that this lease deed was executed by Assistant Manager of the Estate who had right to let out the land on behalf of Balrampur Estate and that it was registered before the revenue authority on 30th June 1952 Petitioner further alleged that he is in possession over the land in dispute on the basis of the aforesaid lease The Consolidation Officer decided the case by the order dt 25 1 1968 partly allowing the objection Against that order appeal was filed by Nagar Palika Balrampur and the case was remanded to the Consolidation Officer by the order dt 30th July 1969 for deciding the dispute afresh After remand of the case the Consolidation Officer made spot inspection and found that except some land measuring 40 acres entire land was a Nala and water logged area He therefore by the order dt 20 5 1971 partly allowed the objection of the petitioner directing that his name be recorded over an area of 40 acres of land of the plot in dispute namely plot No 7021 and that the remaining area should continue to be recorded in the name of Gaon Sabha

3 An appeal was filed by the petitioner against the order dt 20 5 1971 passed by the Consolidation Officer wherein he has asserted that his name be ordered to be recorded over the entire plot No 7021 on the basis of the aforesaid lease deed and possession over it The Settlement Officer Consolidation recorded a finding that the lease was not validly executed and attested but in spite of this finding he directed the name of petitioner to be recorded as Asami tenant over the entire area of the said plot namely plot No 7021 on the basis of the said lease Petitioner preferred revision against that order His revision was heard and decided by the Deputy Director of Consolidation by the order dt 15 1 1976 He recorded a finding that it had not been established that the alleged lease dt 12 5 1952 was executed by the person authorised by the Balrampur Estate It was also held that the lease was not duly attested and on these findings the case which was set up by the petitioner claiming title in respect of the land in dispute on the basis of the said lease was rejected It was further observed by the Deputy Director of Consolidation that the land in dispute was Nala and water logged area and as such no sirdari rights could accrue or be claimed in view of the provisions contained under S 132 A of the U P Zamindari Abolition & Land Reforms Act The Deputy Director of

Consolidation further held that the Settlement Officer Consolidation after holding that the lease was not duly attested erred in granting Asami rights in the said plot to the petitioner And with these findings learned Deputy Director of Consolidation ordered that the name of petitioner be not recorded as Asami tenant in col 3 and the entry in the name of the petitioner as Asami tenant be expunged Aggrieved by this order petitioner has filed this writ petition

3 Learned counsel for the petitioner urged that since no appeal or revision was filed by the Gaon Sabha or by the Nagar Palika Balrampur and as such the Deputy Director of Consolidation could not set aside the order passed by the Settlement Officer Consolidation by which latter had granted Asami rights to the petitioner In support of his contention learned counsel placed reliance upon a decision of this court in Brij Lal v State of U P 1976 Rev Dec 318 (1975 All LJ 684) wherein Hon ble O P Trivedi J observed that the amendment incorporating S 11 C by the Amendment Act 1974 in the U P Consolidation of Holdings Act does not absolve the Gaon Sabha from filing an objection under S 9 or an appeal under S 11 or a revision under S 48 in those cases in which its right or interest in land is disputed and the land is not recorded in the name of Gaon Sabha in the basic year

4 As against this learned counsel for the opposite party No 3 Nagar Palika Balrampur Sri Har Gun Charan placed reliance upon a Full Bench decision of this court in Amir Husain v Dy Director of Consolidation Moradabad 1977 All WC 1 wherein it was held that the Consolidation authorities can validly direct the name of the Gaon Sabha or the State Government to be recorded when they find that there is no valid title holder and that under the law the land had vested in the State Government and then in the Gaon Sabha, even though the Government or the Gaon Sabha has not filed an objection

5 In this view of the above noted Full Bench Decision I do not find any assistance can be drawn by the learned counsel for the petitioner from the decision in Brijlal s case (1975 All LJ 684) (supra) In Brijlal s case it was observed that the land in dispute was not recorded in the name of Gaon Sabha in the basic year In the present case however the land in dispute was recorded Bunjar belonging to the Gaon Sabha and as such in view of the Full Bench decision in Amir Husain s case (supra) I find that the Deputy Director of Consolidation could pass the impugned order directing that the land in dispute be continued to be recorded in the name of Gaon Sabha by setting aside the order passed by the Settlement Officer Consolidation by which the petitioner s name was ordered to be recorded as Asami tenant The land in dispute was Nala and water logged area and as such no Sirdari rights could be claimed in such a land Petitioner has based his title on the basis of the alleged lease dt 12 5 1952 A finding has been recorded to the effect that the lease has not been proved to have been executed by a thorised person on behalf of Balrampur Estate nor it was duly registered and as such the petitioner could not be granted any right on the basis of the lease Thus the order passed by the Settlement Officer Consolidation was per se wrong and petitioner was not a valid title holder The land in dispute belonged to the Gaon Sabha and vested in Nagarpalika Balrampur In this view of the matter I find that the Deputy Director of Consolidation has committed no error in setting aside the order passed by the Settlement Officer Consolidation by which Asami rights were granted to the petitioner on the basis of the alleged lease When a revision was filed by the petitioner against the order passed by the subordinate authorities their judgment and orders came in jeopardy and the Deputy Director of Consolidation could therefore hear and decide the case on merits with regard to claim of parties in respect of the land in dispute Even if no revision was filed against the order passed by the Settlement Officer Consolidation I find that the Deputy Director of Consolidation in exercise of power under S 48 of the U P Consolidation of Holdings Act could pass an appropriate order setting aside the order passed by the Settlement Officer Consolidation which was found to be illegal and wrong on merits and to uphold the claim of Gaon Sabha and Nagar Palika Such power could be exercised under S 11 C of the Act by the Consolidation authorities as held by the Full Bench in Amir Husain s case (1977 All WC 1) (supra) I thus find no infirmity in

the impugned order passed by the Deputy Director of Consolidation so as to call for interference by this Court in exercise of powers under Art 226 of the Constitution

6 The writ petition being devoid of merits is accordingly dismissed No order as to costs

Petition dismissed

1986 ALL L J 184

H N SETH AND J N DUBEY JJ

Anamika Misra Petitioner v University of Allahabad and another Respondents

Civil Misc Writ Petn No 1005 of 1985 D/ 12 9 1985

Allahabad University Act (3 of 1921), S 37 — Allahabad University Rules for admission to LL B Course, R 27 — Deduction of marks in cases of candidates graduating during earlier years — Proper mode — Five per cent marks can be deducted only for those intervening academic years during which candidate did not avail opportunity of seeking admission to LL.B Course after graduation

Intention of R 27 governing admission to LL B Course clearly is that whereas in the case of fresh graduates full marks obtained by them in the Bachelor s degree examination should be taken into consideration in cases of candidates graduating during earlier academic year the total marks obtained by them are to be reduced by 5 % in respect of each such academic year following the academic year in respect of which they are to be treated as fresh graduates in which they could have sought admission to the LL B first year course In other words five per cent marks can be deducted only for those intervening academic years during which a candidate did not avail opportunity of seeking admission to a particular course after his graduation Their cases for admission to LL B Course had therefore to be considered on the basis of the marks so computed (Para 7)

Where the bachelor s degree examination was held in respect of an applicant seeking admission to law course not in the year in which it should have been held but in the subsequent year and he sought admission after a lapse of two academic sessions after the examination only 10% marks and not 15% marks could be deducted from his total (Para 8)

Vineet Saran for Petitioner Standing Counsel for Respondents

H N SETH, J — Aggrieved by the action of the University of Allahabad in not admitting her to the LL B course for 1984 85 Session petitioner Anamika Mishra has approached this Court for relief under Article 226 of the Constitution

2 After the petition was presented on 29th of July 1985 Sri Sunil Gupta, learned counsel for the University took time from this Court for obtaining instructions from the University and placing its point of view before the Court Although the University has not filed any affidavit it has given necessary instructions to Sri Gupta, who has placed its point of view before the Court Inasmuch as the petition can be disposed of on the basis of certain facts regarding which there is no dispute between the parties we are with the consent of parties proceeding to pass final orders on the petition at the preliminary stage itself

3 After the petitioner passed her 85 Intermediate examination in the year 1979 she joined the B A Part I year class of the University in the later part of that very year In normal course final examination for the said course should have taken place sometimes in the months of March/April 1981 but due to certain reasons holding of the said examination was delayed and it actually took place in the months of March/April 1982 The petitioner passed the said examination securing 527 marks out of 900 marks Thereafter she joined M A Philosophy course for the year 1981 82 session admission in respect whereof too had been delayed The final year examination for the said M A course which should normally have taken place in the months of March/April 1983 eventually took place in the month of January 1985 and the result thereof was declared in the month of April 1985

4 After appearing in the M A (Final) Examination the petitioner applied for admission to the 1st year course of LL B for the year 1984-85 in the month of January

1985 Admissions to the said course were to be made on the basis of marks obtained by the candidates in their graduation degree examinations Although the last candidate admitted to the said LL B course had merely secured 452 out of 900 marks in his B A Examination the University did not admit the petitioner who had secured 527/900 marks in her B A Examination

5 On behalf of the University it is not disputed that admissions to the LL B Examination course is made on the basis of marks obtained by the candidates in their Bachelor's Degree Examination subject however to Rule 27 of the Admission Rules which runs thus —

27 For admission to any course subject preference shall be given to fresh graduates over graduates of previous years and to graduates of a particular year over graduates of the year preceding it

Provided that a candidate who has graduated one or more years prior to fresh graduates may be considered for admission subject to cumulative discount at the rate of 5% of aggregate total for each academic year elapsing since the year of his graduation

It was urged that the petitioner was graduate of the academic year 1980-81 she was a fresh graduate in respect of admission to the LL B course for the academic year 1981 82 and for admission to that course could have been considered on the basis of the marks obtained by her in the B A Examination If she sought admission to the 1982 83 LL B course her marks for the purpose would have been computed after deducting 5% marks from out of the total marks secured by her Likewise a deduction of 10% marks for her admission to 1983-84 course and that of 15% marks for her admission to the 1984-85 LL B course had to be made So computed, the petitioner will be deemed to have secured 447 95 marks only Inasmuch as the last of the candidates admitted to the said LL B course had secured 452 marks, petitioner's claim for admission on the basis of the marks obtained by her in her B A Examination cannot be countenanced

6 Learned counsel for the petitioner contended that the University has misinterpreted and misapplied the provisions of Rule 27 mentioned above and it has erred in computing for purposes of admission to LL B course the marks obtained by her in her B A examination According to her correctly computed, it will be found that she had secured more marks than those secured by the last candidate admitted by the University to the said LL B course and that in the circumstances the University is not justified in refusing admission to her

7 Rule 27 quoted above clearly postulates that admission to Post Graduate courses including law are to be made on the basis of marks obtained in the bachelor's degree examination but in the process fresh graduates are to be preferred to graduates of previous years and graduate of a particular year is to be preferred to a graduate of the year preceding the same In the context the expression fresh graduate used in the Rule connotes those candidates who pass the bachelor's degree examination and thus become eligible for admission to the post graduate and LL B courses after last admissions to the concerned post graduate or LL B courses were made and the expression academic year of graduation" means the academic year in which the concerned candidate has actually graduated. The method of giving such preference laid down in proviso to Rule 27 is that in cases of graduates who become eligible for seeking admission to the concerned course during any academic year prior to the academic year of fresh graduates total marks obtained by them have to be reduced by 5% for each such year elapsing after the academic year in respect of which they were entitled to be treated as fresh graduates within the meaning of the Rules Intention of the rule clearly is that whereas in the case of fresh graduates full marks obtained by them in the Bachelor's degree examination should be taken into consideration, in cases of candidates graduating during earlier academic years the total marks obtained by them are to be reduced by 5% in respect of each such academic year following the academic year in respect of which they are to be treated as fresh graduates in which they could have sought admission to the LL B 1st year course In other words five per cent marks can be deducted only for those intervening academic year during which a candidate did not avail opportunity of seeking admission to a particular course after his graduation Their cases for admission to the

LL B course had therefore to be considered on the basis of the marks so computed The stand of the University also is that the expression academic year used in the rule means the period of 12 calendar months between 1st July of a calendar year to 30th of June of the following calendar year

8 Even though the petitioner was admitted to B A 1st year course in the year 1979 and in the normal course she would have appeared in the month of March/April 1981 holding of such examination was actually delayed The examination took place only in the months of March/April 1982 i e during academic year 1981 82 and the petitioner was declared successful therein The petitioner had thus actually graduated during the academic year 1981 82 which for the purposes of the rule has to be treated as the academic year of her graduation She was a fresh graduate in respect of the admission to the LL B courses made during the academic year 1982 83 Her request for admission to such courses if made had to be considered on the basis of the marks obtained by her in her B A Examination without any deduction Her request for admission to such course if made during the academic year 1983-84 had to be considered after discounting 5% marks from the total marks obtained by her in the B A Examination and that made during the academic year 1984 85 by discounting only 10% marks from the total marks obtained by her in the B A Examination As the petitioner made the application for admission to the LL B course for the 1984-85 session in the month of January 1985 i e during the academic year 1984 85 the University was not justified in considering her request for admission to the said LL B course after discounting 15% marks from the total marks secured by her In the circumstances it could discount the total marks obtained by the petitioner in her B A Examination at the most by 10% only So discounting the total marks obtained by the petitioner in her B A its computed value for purposes of admission to the 1984-85 LL B course comes to 464 3(527 52 7) Since the total marks secured by the last candidate admitted to the said LL B course were only 452 the petitioner ranked higher than him in merit and was clearly entitled to admission to the said course

9 In the result the petition succeeds and is allowed Respondent University is directed to admit the petitioner to the 1984 85 LL B course

Petition allowed

1986 ALL L J 186

OM PRAKASH J

Ram Dehal and another Appellants v Ram Kishore and others Respondents

Second Appeal No 886 of 1974 D/ 24 4 1985 *

Civil P C (5 of 1908), O 20, R 4 — New case — Suit for declaration of title and recovery of possession — Both parties claiming exclusive title and possession of well defined and clearly demarcated suit land as a whole — Court cannot give finding that suit land partly belongs to the plaintiffs and partly to defendants

(Para 2)

R D Upadhya S N Srivastava and C Prakash for Appellants P N Tripathi and R S Varma for Respondents

JUDGMENT — This is a second appeal by the defendant appellant against the judgment and decree D/ 8 11 1973 passed by the I Temporary Civil and Sessions Judge Jaunpur The plaintiff respondents filed a suit for perpetual injunction restraining the defendants from interfering with his title in respect of the suit land and in the alternative the plaintiffs also claimed recovery of possession The suit land has been shown in the Amin s map 29 Ka in red colour meaning thereby by letters A B C D E F G H S P The learned Munsif Jaunpur decreed the suit for injunction only with regard to a part of the suit land which is situated towards east of the vertical line running from north to south and ending at the point shown by letter C in the map 29 Ka For convenient description of the land for which the suit was decreed it can be stated that the suit was mainly decreed in respect of the portion of the suit land described as Khandhar Nizayce

*Against judgment and decree of S N Sahay 1st Temporary Civil and Sessions Judge Jaunpur D/ 8 11 1973

in the map 29 Ka For rest of the portion of the said land, the suit for injunction was not decreed The alternative relief of possession was not allowed by the lower court as the lower court found that the plaintiffs were already in possession of the land in respect of which the suit was decreed Rest of the suit was dismissed As the suit in respect of the whole suit land was not decreed the plaintiffs filed appeal before the District Judge and also the defendants preferred appeal as the suit was decreed in respect of a part of the land by the learned Munsif Both the cross appeals were decided together by the learned appella e court The learned appellate court modified the decree of the lower court in that it decreed the suit for perpetual injunction in respect of the bigger area shown by letters G H S P A B C D in the map 29 Ka This portion is mainly covered by Khandhar Nizayee and Khandhar Dalan as shown in the map 29 Ka Having modified so the judgment and decree of the trial court the learned appellate court accordingly dismissed both the appeals

2 Aggrieved by the judgment and decree of the learned appellate court the defendants appellants have filed the appeal in this Court I have heard the learned counsel for the parties at length and have carefully perused the judgments of the courts below I find a manifest error in the orders of he courts below The suit land according to the order of the lower court has been clearly shown in red colour and by the letters A B C D E F G H S P in the map 29 Ka Both the parties to the suit claimed this entire land belonging to themselves So the question for consideration before the courts below was whether the suit land shown in red colour or and described by letters A B C D E F G H S P in the map 29 Ka either belongs to the plaintiff or to the defendants As al eady pointed out, the lower court decreed the suit of the plaintiffs only in respect of a portion of the land in suit It came to the conclusion that a part of the suit land belonged to the plaintiffs and a part belonged to the defendants From the judgment of the lower court it is clear that a small portion belonged to the plaintiffs and much bigger portion belonged to the defendant of the suit land In appeal the approach of the learned appellate authority was also the same in that the appellate court modified the judgment and decree of the lower court observing that the plaintiffs were owners in possession of slightly a bigger area of the suit land shown by letters G H S P A B C D The result is whereas the lower court decreed the suit for perpetual injunction in respect of the sr aller area of the suit land the learned appellate court added some more area of the suit land in the decree After the judgments and decrees of the courts below the result remained the same that the suit land was divided into two portions one portion of which was held to have belonged to the plain iffs and the other portion to the defendants It is this approach of the courts below which in my opinion is patently erroneous When the suit land was unambiguous and clearly described in the map 29 Ka and when both the parties claimed their exclusive title and possession in regard to the same then the question for consideration was whether the suit land as a whole belonged to the plaintiffs or to the defendants By having found that the suit land partly belonged to the plaintiffs and partly to the defendants the courts below have made out absolutely a new case which was not set up by either party The point is whether a court is empowered to cull out a new case In my opinion the clear answer of this question is in negative When both the parties claimed their exclusive title and possession to the suit land well defined and clearly demarcated then the duty of the court is to make an appraisal of the evidence led by the parties with regard to the entire suit land and take a decision whether the suit land belonged to the plaintiffs or to the defendants The approach of the courts below is erroneous inasmuch as it gave rise to an anomalous situation which is just contrary to the respective cases that have been set up by the parties It is nobody s case that the suit land partly belongs to he plaintiffs or partly to the defendants The case of the plaintiffs was that the entire suit land was abadi land and that belonged to them On the other hand the defendants claimed that the suit land was partly abadi and partly in their cultivatory possession The courts below having made out a case which is contrary to the respective cases of the parties I am of the considered view that the judgment and decree of the appellate court deserve to be set aside and the matter has to be remanded to the lower court for being redecided

3 In the result the appeal is allowed, and the judgment and decree D/ 8 11 1973 passed

by the learned appellate court are set aside and the case is remanded to the lower court with a direction that on appraisal of the evidence of the parties and taking into consideration the facts and circumstance in entirety it will record a clear finding whether the plaintiffs or the defendants are entitled to the suit land shown in red colour and described by letters A B C D E F G H S P in the map 29 Ka. and then redecide the case in the light of the observations made above The costs will abide the ultimate result of the suit

Appeal allowed

1986 ALL L J 188

B L YADAV J

Matsya Jivi Sahkari Samiti Seman, Petitioner v Addl Commissioner (Admn) Gorakhpur Division and others Respondents

Civil Misc Writ Petn No 1092 of 1985 D/ 19 9 1985

(A) U P Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 333, 333A — Revision under — Order of Sub-Divisional Officer granting permission to lease is revisable.

The word proceeding obviously means an action at law a process or an act done by an authority a step or a series of action taken for doing something a particular action a step in an action (Para 11)

Where the Sub-Divisional Officer granted permission to lease effected by Land Management Committee the permission was certainly a proceeding for grant of lease and when that affected the right of a society in whose favour the lease was already granted S D O being a Subordinate Court to the Court of the Additional Commissioner a revision against this order was maintainable under S 333A before the Commissioner and under S 333 before the Board of Revenue 1972 All LJ 658 1982 All LJ 1285 Rel on (Para 15)

(B) Constitution of India Art. 226 — U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 122-A(D) — Certiorari — Grant of lease by S.D O — Order of Board of Revenue directing S D O to initiate fresh proceedings for auction of fishery rights, stayed by High Court — Lease granted during pendency of writ petition, without getting order of stay vacated — Order granting lease liable to be quashed (Para 20)

Cases Referred	Chronological Paras
AIR 1982 SC 1249 1982 Cri LJ 1581	5 19
1982 All LJ 1285 1982 All WC 690	15
AIR 1980 Pat 64	5 19
1978 All LJ (NOC) 40 1978 Rev Dec 122	5 19
AIR 1973 SC 2391	4
1972 All LJ 658 1972 All WR 409	15
(1969) 1 QB 616 (1969) 1 All ER 82 (1968) 3 WLR 1273 Corocraft v Pan American Airways	12
AIR 1967 SC 1380	4 18
(1965) 2 QB 53 (1965) 1 All ER 787 (1965) 2 WLR 610 Capper v Baldwin	12
(1963) AC 758 (1963) 1 All ER 341 (1963) 2 WLR 210 Cartledge v E Jopling and Sons	13
(1962) 1 QB 577 (1962) 1 All ER 133 (1962) 2 WLR 245 Smalley v Robey and Co	10
(1889) 23 QBD 350 Spincer v Watts	10
(1889) WN 39 Blake v Summersby	10
(1883) 10 QBD 404 52 LJ QB 362 31 WR 777 Pryor v City Offices Co	10

J N Chatterji for Petitioner M P Singh Standing Counsel for Respondents

ORDER — This petition under Art 226 of the Constitution is directed against the orders dated 14 11 84 and 27 7 84 passed by the Additional Commissioner Gorakhpur in proceedings under S 122 A(2)(k) of the U P Zamindari Abolition and Land Reforms Act 1950 (hereinafter referred to as the Act) and under III proviso to R 115 S of the U P Zamindari Abolition and Land Reforms Rules 1952 (hereinafter referred to as the Rules)

2 The case has got a chequered history On 25th Sept 1982 Dinesh Gramotthan Seva Sansthan obtained a lease for 10 years in respect of a tank situate in village Deeppur Nyaya Panchayat Bagehi Dhanghata District Basti for a sum of Rs 30 000/ and the said Sansthan has paid Rs 3000/ But the permission of the Sub-Divisional Officer could not be granted Later on the Sub-Divisional Officer granted lease by his order dated 20 10 82 on the

recommendation of the Tahsildar As the Dinesh Gramotthan Seva Sansthan was no a preferential Samiti vide order of the Tahsildar dated 18-1 82 (Annexure-2 to Writ No 6414 of 1984) the file of that petition was summoned along with the file of F A F O No 353 of 1983 on the request of the learned counsel for the parties as all the three cases involve the controversy about the validity of the lease between the parties Writ petition No 6414 has been filed by Matsya Jivi Sahkari Samiti Semari the present petitioner against the order of the Board of Revenue dated 15 2 84 which has been admitted on 6-8 84 and operation of the order of the Board of Revenue dated 15 2 84 was stayed F A F O No 353 of 1983 has been filed against the order dated 11 5 83 passed by the Civil Judge granting temporary injunction in favour of Dinesh Gramotthan Seva Sansthan the plaintiff in that suit Respondent No 4 Tappey Singh who is a private individual obtained a lease deed dated 19 4-84 by the Land Management Committee The Board of Revenue by Order dated 15 2 84 accepted the reference made by the Additional Commissioner and remanded the case to the Sub-Divisional Officer for deciding the case afresh and to initiate fresh proceedings for the auction of fisheriights in the pond In case operation of the order of the Board of Revenue was stayed there was no occasion for the Land Management Committee to have granted lease in favour of respondent No 4 After the grant of lease dated 19-4-84 in favour of respondent No 4 Tappey Singh the present petitioner filed a revision before the Commissioner Gorakhpur Division Gorakhpur which was ultimately decided by the Additional Commissioner Gorakhpur by his order dated 14-11 84 holding that the revision was not maintainable The petitioner has challenged this order

3 The case of Tappey Singh respondent No 4 on the other hand is that the approval granted by the Sub-Divisional Officer to the lease dated 19 4 84 in his favour by the Land Management Committee after the order of the Board of Revenue dated 15-2 84 was correct and legal and the approval granted by the Sub-Divisional Officer was not at all a judicial order hence the Addl Commissioner has correctly held the revision to be not maintainable

4 Learned counsel for the petitioner urged that as earlier on 20-10-82 the lease was granted in favour of the petitioner on the recommendation of the Tahsildar who recommended ha the petitioner was a preferential fishermen society to get the lease in accordance with the directions issued under S 126 of the Act amending para 6(2) (Khas) of the Gram Sabha and Bhumi Prabandhak Samiti Manual and against that a revision was filed by Dinesh Gramothan Seva Sansthan who has obtained the lease on 20 9 82 As the possession of that Samiti was disturbed by the present petitioner and others hence against that the Gramotthan Seva Sansthan filed a Civil Suit No 6 of 1983 and obtained a temporary injunction on 11 5-83 against which the aforesaid F A F O was filed which was pending Thereafter in the revision filed by the Dinesh Gramothan Seva Sansthan the Additional Commissioner recommended the matter to the Board of Revenue that the revision may be allowed and the Land Management Committee may be directed to decide the question of grant of lease afresh in accordance with the directions issued under Section 126 of the Act The Board of Revenue allowed the revision by an order dated 15 2 84 against which the present petitioner filed a Writ Petition No 6414 of 1984 which was admitted and stay was granted on 6 8 84 As the operation of the order of Board of Revenue has been stayed by this Court hence there was no occasion for the Land Management Committee to have granted lease in favour of Tappey Singh respondent No 4 who was a private individual and to that lease the Sub-Divisional Officer granted permission Hence that was a proceeding under IIIrd proviso to R 115-S of the Rules emanating from S 122 A(2)(ka) of the Act and as such in any case that was a proceeding for grant of lease in respect of tank Hence the revision was maintainable under S 333 of the Act before the Board of Revenue and under S 333-A of the Act before the Additional Commissioner He relied upon Mulraj v Murti Raghunath Ji Maharaj AIR 1967 SC 1386 and Chandrika Misir v Bhaiya Lal AIR 1973 SC 2391

5 Learned counsel for the respondents on the other hand urged that the order passed by the Additional Commissioner holding that

the revision was not maintainable against the order of the Sub-Divisional Officer granting approval to the lease dated 19 4 84 in favour of respondent No 4 was just an administrative order and not revisionable Hence he impugned order was correct He placed reliance on the State of Maharashtra v Ramdas Srinivas Naik AIR 1982 SC 1249 Gurdin v Gaon Sabha 1978 Rev Dec 122 (1978 ALJ (NOC) 40) and Shri Pujan Singh v State of Bihar AIR 1980 Pat 64

6 I have heard the learned counsel for the parties The main controversy between the parties is whether the revision preferred by the present petitioner against the order of the Sub Divisional Officer Basti granting permission to the lease dated 19 4 84 was revisable under S 333 by the Board of Revenue and or S 333 A by the Commissioner or not It is therefore better to set out the statutory provision of S 333 of the Act

333 Power of Board to call for cases — The Board may call for the record of any suit or proceeding decided by any subordinate court in which no appeal lies or where an appeal lies but has not been preferred and if such subordinate court appears —

(a) to have exercised a jurisdiction not vested in it in law or

(b) to have failed to exercise a jurisdiction so vested or

(c) to have acted in the exercise of jurisdiction illegally or with material irregularity the Board may pass such order in the case as it thinks fit

7 The procedure for Revision before the Commissioner or Addl Commissioner has been provided under S 333A

8 It is accordingly evident that the Board has got revisional jurisdiction to call for the record of any suit or proceeding decided by any subordinate court In the instant case certainly the approval granted by the Sub Divisional Officer to the lease in favour of respondent No 4 was not a decision in the suit and it has to be examined whether the order passed by the Sub-Divisional Officer approving the lease dated 19 4-84 in favour of respondent No 4 was a proceeding or not and whether this proceeding has affected the rights of the petitioner

9 The word proceeding according to the Shorter Oxford English Dictionary connotes the institution or carrying on of an action at law a legal action or process any act done by an authority or a court of law any step taken in a case by either party According to Websters III New International Dictionary the word proceeding connotes a particular step or series of steps adopted for doing or accomplishing something a legal action a particular action at law course of procedure in a judicial action or in a suit in litigation

10 In view of Stroud s Judicial Dictionary (Fourth Edition) the word proceeding connotes any action and proceeding is used as meaning a step in an action (See Smalley v Robey & Co (1962) 1 QB 577) It means a step forward and not one backward Spencer v Watts (1889) 23 QBD 350 According to Words and Phrases Legally Defined Vol IV the term proceeding is frequently used to note a step in an action and obviously it has that meaning in such phrases as proceeding in any cause or matter Proceeding a general word meant to cover every step in an action and is equivalent to the word action (See Prayor v City offices Co (1883) 10 QBD 504) Anything that precedes the final judgment or order is in my opinion a proceeding in the act on (See Blake v Summersby (1889) WN 39)

11 In view of the aforesaid discussion the word proceeding obviously means an act on at law a process or an act done by an authority a step or a series of action taken for doing something a particular action a step in an action and it is crystal clear in my opinion that an order passed by the Sub Divisional Officer was certainly a proceeding for the grant of lease in favour of respondent No 4 It has been urged by the learned counsel for the respondents that against the administrative order no revision would lie S 333 of the Act is not couched in such a way as to warrant an inference or interpretation of S 333 as made by the Additional Commissioner or as suggested by the learned counsel for the respondents

12 Where the jurisdiction under S 333 of the Act has to be ascertained the words of the section should be correctly interpreted No words can be added or substracted. Craies on Statute Law 7th Edition at pages 64 and 65 has observed

The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves If the words of the statute are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense (See Capper v Baird in (1965) 2 QB 53) The function of the Court is to interpret an Act according to the intent of them that made it (See Corocraft v Pan American Airways (1969) 1 QB 616)

13 Maxwell on Interpretation of Statutes 12th Edition on page 25 observes

The rule of construction is to amend the Legislature to have meant what they have actually expressed The object of all interpretation is to discover the intention of Parliament

On page 29 it has been observed —

Where by the use of clear and unequivocal language capable of only one meaning anything is enacted by the legislature it must be enforced however harsh or absurd or contrary to commonsense the result may be The interpretation of statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient (See Cartledge v E Jopling & Sons Ltd (1963) AC 758)

14 The permission granted by the Sub-Divisional Officer is certainly a proceeding for grant of lease in favour of respondent No 4 which affects the right of the petitioner What S 333 requires is that a revision is maintainable against any suit proceeding decided by any subordinate court In the instant case the proceeding for grant of lease in favour of respondent No 4 by the Land Management Committee was certainly a proceeding and that was decided by the Sub-Divisional Officer by his order dated 19 4 84 who was a subordinate court to the court of the Additional Commissioner Further this order by the Sub-Divisional Officer affects the legal right of the petitioner and as to whether a particular right is a legal right it has been laid down in A text book of Jurisprudence 4th Edition by G W Paton (Chapter XII page 284) as follows —

From all these uses of the term there must be distinguished a legal right of which the test is simple enough it is the right recognized and protected by the legal system itself On page 295 it has been further observed

There are four elements in every legal right

(1) the holder of the right (2) the action or forbearance to which the right relates (3) the res or subject matter of the right (4) the person bound by the duty

15 In Smt Krishna Devi v Board of Revenue 1972 All WR 40 (1972 AL LJ 668) a dispute was that an order was passed by the Magistrate in proceedings under Section 11(5) of the U P (Zamindari) Abolition and Land Reforms Rules in connection with an allotment of abadi sites by the Land Management Committee A question arose as to whether in passing the order in the proceedings under Rule 11(5) in respect of the abadi site the Sub-Divisional Officer can be deemed to be a subordinate to the Board of Revenue and a revision would lie against that order or not It was held by a Division Bench that the Sub-Divisional Officer has passed the order in respect of an allotment of the abadi site and all the points which were sought to be raised in the instant case including that it was an administrative action were raised and it was held that he was functioning as a court In that case it was held that the Assistant Collector resolved a lis between the two parties and he gave a decision in the case His decision is final and the Assistant Collector discharges the judicial functions and not non judicial I am of the view that the case of Smt Krishna Devi v Board of Revenue (supra) applies on all fours The aforesaid Division Bench case has been followed in Shiv Charan Lal v Board of of Revenue U P 1982 All WC 690 (1982 All LJ 1285) I am in respectful agreement with the view taken in the aforesaid cases and hold that in the instant case revision was maintainable under S 333A before the Commissioner and under S 333 before the Board of Revenue

16 The order of the Board of Revenue dated 15 2 84 was challenged in Civil Misc Writ Petition No 6414 of 1984 which was admitted on 6-9 84 and the order of the Board of Revenue was stayed and thereafter the allotment was made afresh in favour of respondent No 4 I have perused the counter affidavit filed on behalf of respondent No 4

the revision was not maintainable against the order of the Sub-Divisional Officer granting approval to the lease dated 19 4 84 in favour of respondent No 4 was just an administrative order and no revision lay. Hence the impugned order was correct. He placed reliance on the State of Maharashtra v Ramdas Srinivas Naik AIR 1962 SC 1249, Gurdin v Gaon Sabha 1978 Rev Dec 122 (1978 All J (NOC) 40) and Shri Pujan Singh v State of Bihar AIR 1980 Pat 6.

6 I have heard the learned counsel for the parties. The main controversy between the parties is whether the revision preferred by the present petitioner against the order of the Sub Divisional Officer Basti granting permission to the lease dated 19 4 84 was revisable under S 333 by the Board of Revenue and/or 333 A by the Commissioner or not. It is therefore better to set out the statutory provision of S 333 of the Act

333 Power of Board to call for cases — The Board may call for the record of any suit or proceeding decided by any subordinate court in which no appeal lies or where an appeal lies but has not been preferred and if such subordinate court appears —

(a) to have exercised a jurisdiction not vested in it in law or

(b) to have failed to exercise a jurisdiction so vested or

(c) to have acted in the exercise of jurisdiction illegally or with material irregularity the Board may pass such order in the case as it thinks fit

7 The procedure for Revision before the Commissioner or Addl Commissioner has been provided under S 333A

8 It is accordingly evident that the Board has got revisional jurisdiction to call for the record of any suit or proceeding decided by any subordinate court In the instant case certainly the approval granted by the Sub Divisional Officer to the lease in favour of respondent No 4 was not a decision in the suit and it has to be examined whether the order passed by the Sub-Divisional Officer approving the lease dated 19 4 84 in favour of respondent No 4 was a proceeding or not and whether this proceeding has affected the rights of the petitioner

9 The word proceeding according to the Shorter Oxford English Dictionary connotes the instituting or carrying on of an action at law the action or process any act done by an authority or a court of law any step taken in a case by either party According to Websters III New International Dictionary the word proceeding connotes a particular step or series of steps adopted for doing or accomplishing something a legal action a particular action at law course of procedure in a judicial action or in a suit in litigation

10 In view of Stroud's Judicial Dictionary (Fourth Edition) the word proceeding connotes any action and proceeding is used as meaning a step in an action (See Smalley v Robey & Co (1962) 1 QB 57) It means a step forward and not one backward Spencer v Watts (1889) 23 QBD 330 According to Words and Phrases Legally Defined Vol IV the term proceeding is frequently used to note a step in an action and obviously it has that meaning in such phrases as proceeding in any cause or matter Proceeding is a general word meant to cover every step in an action and is equivalent to the word action (See Prayor v City offices Co (1883) 10 QBD 504) Anything that precedes the final judgment or order is in my opinion a proceeding in the action (See Blake v Summersby (1889) W N 39)

11 In view of the above discussion the word proceeding obviously means an action at law a process or an act done by an authority a step or a series of action taken for doing something a particular action a step in an action and it is crystal clear in my opinion that an order passed by the Sub-Divisional Officer was certainly a proceeding for the grant of lease in favour of respondent No 4 It has been urged by the learned counsel for the respondents that against the administrative order no revision would lie. S 333 of the Act is not couched in such a way as to warrant an inference or interpretation of S 333 as made by the Additional Commissioner or as suggested by the learned counsel for the respondents

12 Where the jurisdiction under S 333 of the Act has to be ascertained the words of the section should be correctly interpreted No words can be added or substracted. Craies on Statute Law 7th Edition at pages 64 and 65 has observed

17 In paragraph No 8 of the petition it was alleged by the petitioner that the earlier petition was contested by respondent No 4 and he made an application that he was trained in the Science of Fishery and in consultation with the Land Management Committee he obtained a patta from the same Sub-Divisional Officer who granted the same by order dated 19 4 84 (against his own order dated 20 10 1982 Reply to this paragraph is given in paragraph No 8 of the counter affidavit filed by Gyan Prakash on respondent No 4 in which it has been alleged that the Sub-Divisional Officer granted patta in favour of the respondents on 19 4 1984 and the matter was subjudice in this Court in the writ petition and the facts appear from order filed earlier But the circumstances were not given in the counter affidavit as to how the patta was granted when the operation of the order of the Board of Revenue was stayed as indicated above It is therefore abundantly clear that the counter affidavit is totally silent in respect of the circumstances under which lease was granted to respondent No 4 in spite of the interim orders granted by this Court

18 In Mulraj v Murti Raghunath Ji Maharaj (AIR 1967 SC 1386) (supra) relied upon by the learned counsel for the petitioner it was held that the stay was granted and communicated to the court against whose order the stay order was passed In the instant case I am of the view that in view of the circumstances of the case the Sub-Divisional Officer was not right in granting the patta in view of the orders of this Court

19 The case of Shiv Pujan Singh v State of Bihar (AIR 1980 Pat 64) (supra) relied upon by the learned counsel for the respondents was in respect of the scope of the writ of Mandamus against an order of administrative Tribunal I am of the view that it does not hold field in the instant case Similarly State of Maharashtra v Ramdas Srinivas Naik (AIR 1982 SC 1249) (supra) relied upon by the learned counsel for the respondents was a case in respect of a statement made before the High Court by the counsel and it does not help the respondents. Similarly in Gurdin v Gaon Sabha (1978 All LJ (NOC) 40) (supra) permission was granted by the Sub-Divisional Officer to enter into a compromise in his executive capacity But the instant case was not a case of compromise

20 In view of the discussions made above I am of the view that permission granted by the Sub-Divisional Officer in connection with granting lease to Respondent No 4 vide his order dated 19 4-1984 and the proceedings decided by him (Sub-Divisional Officer) in connection with the grant of lease is revisable under Ss 333 and 333A of the U P Zamindari Abolition and Land Reforms Act The order could be not denying the fact that the order of the Sub Divisional Officer passed in favour of Respondent No 4 was certainly an order and the proceeding to grant lease has been decided and Sub-Divisional Officer is certainly a Court Subordinate to the Board of Revenue and the Addl Commissioner and the grant of lease was made during the pendency of the Writ Petition namely Civil Misc Writ Petition No 6414 of 1984 in which stay order was granted staying the operation of the impugned order Hence unless the aforesaid interim order was vacated the Sub Divisional Officer has no authority to grant lease ignoring the stay order passed by this Court I am therefore of the view that the order passed by the Sub-Divisional Officer in connection with the proceedings granting lease and the order passed by the Additional Commissioner holding that the revision was not maintainable are liable to be quashed by issuing a writ of certiorari

21 In view of the discussions made hereinbefore the present petition succeeds and is allowed the impugned orders dated 27 7 1984 and 14 11 1984 are quashed and the case is remanded back to the Additional Commissioner Gorakhpur Division Gorakhpur to admit the revision to its original number and decide the same afresh Propriety however requires that the revision may be decided by some Additional Commissioner other than Sri Bhuiya Din as he has already expressed his opinion I however refrain from making any order as to costs

Petition allowed

1986 ALL L J 193

H N SETH AND A N VARMA JJ

Agarwal Kirana Corporation and others Petitioners v Krishi Utpadan Mandi Samiti Sadabad (Mathura) Respondent

Civil Misc Writ Petn No 6178 of 1985 D/ 6-9 1985

U P Krishi Utpadan Mandi Adhiniyam (25 of 1964), S 17 — Market Committee — Power to levy and collect market fee — Goods in transit only passing through committee area — Committee cannot levy and collect market fee on such goods — Market Committee also cannot insist on production of gate pass issued by the Committee where they were purchased — Production of Bills, Biltis, Hundies or Invoices commercially in vogue is sufficient to prove goods being in transit.

(Paras 9, 10)

Rakesh Dwivedi and Dinesh Dwivedi for Petitioners Standing Counsel for Respondent.

A N VARMA, J — The petitioners who are wholesale dealers in Kirana goods have assailed by means of this petition the levy and collection of market fee by the respondent Krishi Utpadan Mandi Samiti Sadabad (hereinafter referred to as the respondent Mandi Samiti) on the Kirana goods sold by the petitioners to various retailers They have prayed for a writ of mandamus directing the respondent Mandi Samiti not to levy and collect market fee from the petitioners on the Kirana goods purchased from them in the market area of Mandi Samiti, Agra and which are being carried by traders to various destinations outside the market area of Sadabad

2 Shortly stated the petitioners case is that as wholesale dealers they purchase Kirana goods from various States like Gujarat Rajasthan, Bihar Punjab and Andhra Pradesh, etc under bills Hundis and invoices establishing the fact that the purchases made by them were from traders of places outside the market area of Agra. They do not make purchases from any agricultural producer in the market area of Agra. In the usual course of business after having imported the Kirana goods within Agra, they sold it to retail traders from outside the city of Agra. The petitioners contend that such sales to retail dealers within the market area of Agra are not leviable to market fees and a dispute has already been pending in that behalf between the petitioners and the Agra Mandi Samiti. They further assert that these traders who purchase Kirana goods from the petitioners for being carried to various destinations like Sambhal in the district of Moradabad, etc all falling outside the local limits of the market area Sadabad by trucks which, in the course of their journey pass through the market area Sadabad The truck drivers carry bills Biltis and invoices establishing beyond doubt that the purchases have been made within the market area of Agra Mandi Samiti and are booked for places outside Mandi Samiti. Sadabad and that the goods are merely in transit through the said Mandi Samiti. The officials of the Sadabad Mandi Samiti, however have been stopping these trucks at the Mandi Samiti barrier and levying and collecting market fee as well as compounding fee on an assumed basis i e treating these goods as having been purchased from the market area of Sadabad itself, ignoring the protests of the truck drivers that the goods are merely in transit having been purchased within the market area of Agra for being transported to places outside the Mandi Samiti, Sadabad. The Officials also refused to take into account the bills Biltis or invoices produced by these truck drivers in support of their protests and are insisting on the production of gate pass of Agra Mandi Samiti despite the information supplied to them by the truck drivers that no market fee was leviable by the Agra Mandi Samiti in respect of the goods in question and that, therefore none has been paid.

3 On the assertions set out above the contention of the petitioners is that the levy and collection by the respondent Mandi Samiti on the Kirana goods purchased from the petitioners which are merely in transit through the market area of the respondent Mandi Samiti are wholly incompetent and without any authority of law

4 A counter affidavit has been filed on behalf of the respondent Mandi Samiti from which it is apparent beyond doubt that the

levy of market fee on the petitioners is entirely on an assumed basis The burden of the respondent s counter affidavit is that since the transporters do not produce any gate pass of the Mandi Samiti, Agra, it is entitled to presume that the sale transactions have not taken place within the market area of Agra Mandi Samiti but they must have taken place within its own market area and hence exigible to market fee by it In the counter affidavit it is further asserted that, in the first place the truck drivers did not produce any bills or Biltis, etc at the respondent Mandi Samiti barrier in support of their claim that the goods are in transit from Agra to other places outside Mandi Samiti Sadabad and, secondly these bills, Bilts and invoices are entirely irrelevant and immaterial as proof of the fact that the goods were purchased within the market area of Agra or that they are in transit to places outside the market area of the respondent Samiti According to the respondent the only acceptable proof of the assertion that the goods have been purchased within market area of Agra Mandi Samiti would be the gate pass issued by it and in its absence the respondent is entitled to demand and collect market fee from the petitioners

5 For the petitioners it was contended that the demand for the production of the gate pass of Agra Mandi Samiti by the respondent and on the failure of the transporters to produce the same the levy and collection of the market fee on the goods sold by the petitioners are wholly unsupported by any statutory provisions It was urged that the gate passes issued by the Agra Mandi Samiti under the provisions of the U P Krishi Utpadan Mandi Samiti Adhiniyam and the Rules framed thereunder as well as the bye-laws framed by the Mandi Samiti Agra are relevant only for showing that market fee has been paid on the goods purchased within market area of that Mandi Samiti and since the petitioners are not paying any market fee to the Agra Mandi Samiti because of the pendency of a dispute between them and the Agra Mandi Samiti in this Court in the shape of certain writ petitions, it is impossible for them to produce the gate passes of Agra Mandi Samiti. That being so it was argued, the action of the respondent Samiti in insisting on the gate passes of the Agra Mandi Samiti as the sole and only proof of their claim that the goods have been sold within the market area of Agra is clearly arbitrary and wholly without any authority of law It was further submitted that the bills, Biltis and invoices which are produced by the petitioners establish beyond doubt that the goods have been purchased within the market area of Agra and pass through the market area of respondent Mandi Samiti merely in transit to places outside the respondent s market area Consequently the levy and collection of market fee on the petitioners by the respondent Mandi Samiti are clearly unjustified

6 On behalf of the respondent Mandi Samiti learned counsel reiterated the stand taken in the counter affidavit set out hereinabove The respondent s counsel submitted that the Mandi Samiti Sadabad is perfectly within its right to levy market fee on the petitioners on an assumed basis as the petitioners had not furnished the only reliable evidence in support of their claim namely the gate passes of Agra Mandi Samiti

7 Having heard learned counsel for the parties at some length and having given the matter a careful consideration we are clearly of the opinion that the contentions raised on behalf of the petitioners are well founded and must be accepted As mentioned above the respondent Mandi Samiti is levying and collecting market fee from the petitioners on an assumed basis and not on any direct evidence of purchases or sales having taken place within the market area of respondent Mandi Samiti and this presumption is founded exclusively on the inability of the petitioners and their transporters to produce the gate passes of Agra Mandi Samiti

8 Thus in paragraph 4 of the counter affidavit as well as in other paragraphs thereof the clear stand taken by the respondent Samiti is that it would not accept any other evidence in support of the petitioner s claim than the gate passes issued by the latter In paragraph 4 of the counter affidavit the respondent asserts

it is immaterial that they were having bills, Hundis and invoices Now the clear case of the petitioners is that they are not liable to pay any market fee to the Agra Mandi Samiti on kind of transactions being entered into within the market area of that Samiti They also assert that no gate passes are being issued to them because of that fact It is said that a

dispute is pending between the petitioners and the Agra Mandi Samiti in that connection Under the circumstances the petitioners cannot obviously produce gate passes of Agra Mandi Samiti which is being insisted on by the respondent Mandi Samiti

9 The question which falls for consideration therefore is whether if the petitioners cannot produce the gate passes of Agra Mandi Samiti for the reasons asserted by them are they precluded altogether from establishing that no transaction has taken place within the market area of Sadabad and that, in fact, the goods were booked from Agra to places outside the Sadabad Mandi Samiti' In our considered view the question must be answered in the negative Learned counsel for the respondent Mandi Samiti took us through the bye-laws framed by the Sadabad Mandi Samiti and he was entirely unable to point out any single provision therein which might indicate that in the absence of gate passes issued by the Mandi Samiti within which the goods may have been purchased, the same must be subjected to the levy of market fee by the respondent Samiti on an assumed basis even if there is other evidence available which might affirmatively prove that the goods are purchased within the market area of another Mandi Samiti and are booked to destinations outside the respondent Mandi Samiti. Learned counsel for the respondent invited our attention to bye-law No 68 of the Bye-laws framed by the Sadabad Mandi Samiti but we find the same does not support the contention of the respondent. It merely provides that every transporter or trader entering the market area of the Mandi Samiti shall be issued entry slip in Form No 53 and a gate pass in Form No 54 on leaving the same This however has no bearing on the question at hand Forms Nos 53 and 54 do not require any particulars to be disclosed which might be relevant for deciding the question whether the goods are merely in transit. There are no columns therein for indicating the place of origin from where the goods are purchased and the place of destination

10 In the absence of any specific statutory provision, therefore we see no valid ground why the respondent Mandi Samiti should not accept all such documents as are commercially in vogue establishing the fact that the goods have been purchased within the local limits of a market area A for being carried to those of market area B and are merely in transit through the respondent Mandi Samiti for being carried to their place of destination. We are clearly of the opinion that the respondent s stand that they would not accept bills. Biltis or invoices in support of the traders claim that the goods have not been purchased within the market area of Sadabad is unjust, unreasonable and arbitrary There does not seem to be any valid justification for the respondent s insisting on gate passes of Agra Mandi Samiti as the sole and exclusive proof of the petitioners assertion that the goods were merely in transit through Sadabad The respondent Samiti cannot therefore in our opinion, levy and collect market fee from the petitioners just because they are unable to produce gate passes of Agra Mandi Samiti.

11 The respondent may however evolve a procedure for their own facility by issuing transit passes or any other like documents such as are in vogue in municipalities and other local authorities at octroi barriers in respect of transport of goods which are merely in transit It already has a procedure for issue of entry slips and gate passes It can supplement the same by issue of appropriate additional documents at the entry and exit barriers of the market area to facilitate the traders which merely pass through the market area without intending to transact any sales within that market area

12 In regard to the amounts which the respondent Samiti have already realized from the petitioners however we are not inclined to grant any relief to the petitioners inasmuch as there is a serious dispute between the petitioners and the respondent as regard whether or not the transporters produced any bills or Biltis at the barriers. In the counter affidavit the respondent Samiti has asserted that no documents were produced by the truck drivers. In future however the respondent shall accept from the petitioners bills, Hundis or Biltis and invoices and such other commercially prevalent documents which may be relevant for determining whether the goods are merely in transit through Sadabad market area, and shall not insist on the gate passes issued by other Mandi Samitis as the sole evidence of the fact that the goods are merely in transit.

13 In the premise the petition succeeds and is allowed The respondent is directed not to levy and collect market fee on Kirana goods sold by the petitioners in the market area of Mandi Samiti, Agra to places outside the jurisdiction of the Mandi Samiti, Sadabad merely on the failure of the transporters to produce gate passes issued by the Agra Mandi Samiti The petitioners shall be entitled to their costs from the respondent.

Petition allowed.

1986 ALL L J 196

S K DHAON J

Ram Pati and others, Petitioners v District Judge Mirzapur and others Respondents

Civil Misc Writ Petn No 6748 of 1974 D/ 29 8 1985

(A) Forest Act (16 of 1927), S 6 — U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 195 and S 117(1) and (6) — Declaration of land as reserved forest — Land held under patta from Gaon Sabha — Cannot be declared as reserved forest on resumption

A Notification under S 117(1) of the U P Act was issued by the State Government whereby certain land which vested in the State was declared as being vested in the Gaon Sabha The Gaon Sabha executed a patta in favour of the instant writ petitioners in respect of a portion of the land and they were recorded as Sirdars thereof. Thereafter the State issued a Notification under S 117(6) whereby the land was resumed by the State Government, Notifications were issued under Ss 4 and 6 of the Forest Act for the purpose of constituting the land as reserved forest The petitioner put in objections stating that they were lessees from the Gaon Sabha and hence their land could not be declared as reserved forest. The objections were rejected by the Settlement Officer and the Appellate Authority The instant writ petition was filed questioning the correctness of the order of rejection

Held that the consequence of the action under S 117(6) is that the Gaon Sabha is divested of its possession over the things

KC/AD/G874/85/WNG

However the deprivation of its possession and the right of management do not nullify the actions already taken by it in the course of management of the things Any transaction entered into by it or any action taken by it in furtherance of its obligation to manage and supervise the things will not only continue to exist but also continue to bind the State Government on whose behalf it had hitherto been managing or superintending the things Therefore if in the course of management the Gaon Sabha settled the plot in dispute with the petitioners that settlement would remain intact and wholly unaffected by the resumption of the possession by the State Government of the things including the land from the Gaon Sabha AIR 1976 SC 2602 Applied. (Para 12)

In proceedings under the Forest Act the legality or the regularity of the proceedings taken under S 195 of the U P Act for admitting the petitioners as sirdars cannot be gone into (Para 6)

(B) U.P Tenancy Act (17 of 1939), S 3(10) — Let for growing of crops" — Meaning of — Actual growing of crops after letting is not essential.

The definition clearly indicates that the intention for which the letting takes place has merely to be seen. Two situations are provided even in the first part one is land let for growing of crops and the other is land held for growing of crops Actual growing of crops is not a sine qua non or a condition precedent for attracting the phrase for growing of crops (Para 15)

(C) U P Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 198(4) and 333 — Powers of Civil Court — No power to interfere with cancellation of lease

The allotment of lease made in favour of a person could not be annulled or interfered with by the Civil Court. The reason is that the Legislature has in the U P Act provided for a particular forum and resort can be had to that forum alone and to none other (Para 7)

Cases Referred Chronological	Paras
AIR 1977 SC 2196 (1977) 3 All LR 447	16
1977 All LJ 310 AIR 1977 All 360 (FB)	8
AIR 1976 SC 2602	11

AIR 1976 All 121 11
AIR 1969 SC 78 8

Sarkatha Rai for Petitioners Standing Counsel for Respondents

ORDER — The petitioners who claim themselves to be the Sirdars of certain plot of land, challenge the legality of an order passed by a District Judge acting as an Appellate Authority under S 17 of the Indian Forest Act 1927 as applicable to Uttar Pradesh (hereinafter referred to as the Act) dismissing their appeal and upholding the order of the Forest Settlement Officer (hereinafter referred to as the Settlement Officer) rejecting their objections

2 Before the record operations there were plots Nos 142 143 149 150 151 152 153 154 155 and 156 After the record operations these plots were renumbered as plot No 96Ka. area 68 Bighas The said plot was situated in village Bahera Pargana Vijaigarh, Tehsil Robertsganj District Mirzapur The plot vested in the State of Uttar Pradesh under S 6 of the U P Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the U P Act) Thereafter a notification under S 117 of the U P Act was issued and the plot vested in the Gaon Samaj (later on substituted as Gaon Sabha) On 20th July 1963 the Gaon Sabha executed a Patta in favour of the petitioners with respect to a portion of the said plot. On 9th April, 1964 an order of mutation was passed by the Sub-Divisional Officer in favour of the petitioners and they were recorded as Sirdars in the Khatauni of 1375 to 1377F By a notification dt 31st December 1965 purported to have been issued under S 117(6) of the U P Act vesting of the entire plot in the Gaon Sabha was resumed by the State Government. On 14th January 1967 a notification purporting to be under S 4 of the Act was issued with respect to the plot This was followed by a notification on 15th April, 1967 purporting to be under S 6 of the Act The petitioners preferred an objection before the Settlement Officer claiming themselves to be the sirdars of an area of 20 Bighas 11 Biswas of the said plot. They claimed to be lessees from Gaon Sabha on the basis of the aforementioned Patta and, therefore the plot, or in any case the area which was the subject matter of the leases could not be declared as reserved forest As already indicated, the objection was rejected. They preferred an appeal.

3 The Appellate Authority recorded the findings the plot was forest on 1st July 1952 and it vested in the Gaon Sabha as such The vesting of the entire plot in the Gaon Sabha was undone by the notification dt 31st December 1965 The petitioners were admitted as sirdars over a portion of the plot through the aforementioned Patta and their names were duly mutated in the revenue papers The application for the cancellation of the (sic) filed by the Forest Department was rejected on 6th April, 1970 and the appeal preferred by the Department against the said order was also dismissed on 19th February 1971 In 1963 the Gaon Sabha, Bahera had the right to admit the petitioners as sirdars over the portion of the plot. The leases in favour o the petitioners were not executed surreptitiously The Pattas were executed in 1963 The irregularity if any of the leases could not be challenged in the proceedings under the Act. This could be done either in proceedings under S 198 of the U P Act or by means of a regular suit. The consequence of the notification dt. 31st December 1965 under S 117(6) of the U P Act was that the rights of the Gaon Sabha and the persons claiming through it, including the petitioners, came to an end. The petitioners ceased to be sirdars on the date when the notifications under Ss 4 and 6 of the Act were issued The area of the plot which was the subject matter of the leases was not under cultivation in 1963 and thereafter The portion of the plot of which the petitioners claim to be the sirdars did not constitute a holding within the meaning of the U P Tenancy Act, 1939 so as to fall in the exceptions provided for in S 3 of the Act

4 The first question to be determined is whether the plot was land (cultivable barren) or forest when a notification under S 4 of the U P Act was issued. In other words, whether on 1st July 1952, the date of vesting the plot was either land or forest. Under S 6 the plot vested in the State of Uttar Pradesh free from all incumbrances with effect from 1st July 1952 and the plot, in the condition as it was on 1st July 1952 vested in the Gaon Sabha from the date of the notification under S 117 of the U P Act. The Settlement Officer did not advert to this question at all. The appellate Authority

however observed that the plot was forest and as such on 1st July 1952 the same stood vested in the State and thereafter in the Gaon Sabha. It is to be noted that, apart from making this stray observation there is no discussion as to how and in what manner the plot was considered as forest by it. It appears that before the authorities below the respondents neither led any evidence nor produced any material to show that on 1st July 1952 the plot was a forest. Even in this Court, despite the fact that the petitioners have averred that the plot was Banjar on the relevant date apart from denying this fact and reiterating that it was forest no material has been produced by the contesting respondents. This Court is entitled to take judicial notice of the fact that different notifications under S 117 of the U P Act were issued with regard to land and forests and other things enumerated in S 117 During the course of the arguments I suggested to learned Standing Counsel to find out the particulars of the notification and produce a copy of the same but he failed to do so In the absence of any material the observation of the Appellate Authority much less a finding cannot be sustained and has to be ignored

5 S 3(14) of the U P Act provides that except in Chapter VII and some other provisions with which we are not concerned land means land held or occupied for purposes connected with agriculture horticulture or animal husbandry which includes pisciculture and poultry farming In Chapter VII falls S 117 That provision provides that at any time after the publication of the notification referred to in S 4 the State Government may by general or special order declare that as from a certain date all or any of the things enumerated therein which had vested in the State under the U P Act shall vest in a Gaon Sabha. In S 117 these things are mentioned. We are only concerned with the first two namely (1) lands whether cultivable or otherwise except lands for the time being comprised in any holding or grove and (2) forest. S 195 of the U P Act provides that the Land Management Committee (substituted for Gaon Sabha by S 53 of U P Act No 37 of 1958) shall have the right to admit any person as Sirdar to any land where (a) the land is vacant land (b) the land is vested in the Gaon Sabha (substituted for Gaon Samaj by U P Act No 33 of 1961) or (c) the land has come into the possession of the Land Management Committee under S 194 or under any other provision of the U P Act (at refers to land becoming vacant under any provision of the Act Therefore we are neither concerned with (a) or (c) We are directly concerned with (b) We have already seen that the definition of land as contained in S 3(14) of the U P Act has no application to lands referred to in S 117 and we have also seen that in S 117 land may be cultivable or otherwise In other words, S 117 embraces land other than land held or occupied for purposes connected with agriculture horticulture or animal husbandry which includes pisciculture and poultry farming It follows that S 117 envisages vesting in the Gaon Sabha of land other than the one referred to in S 3(14) And at the relevant time S 195 empowered the Gaon Sabha to admit any person as sirdar to any land which vested in it under S 117 The position therefore is that the definition of land" as contained in S 3(14) had and has no application to the land referred to in (b) of S 195 This position is further clarified when we have in mind that S 3 itself provides that in this Act, unless there is anything repugnant in the subject or context the definitions as enumerated therein would apply In S 195 the subject or context of land is certainly repugnant or contrary to the land as contemplated in the definition in S 3(14) Clearly the definition of land in S 3(14) has no relevance in the context of S 195 Therefore there is no difficulty in taking the view that even forest land is covered by the expression land used in (b) of Section 195

6 The Appellate Authority has rightly taken the view that in proceedings under the Act the legality or the regularity of the proceedings taken under S 195 of the U P Act for admitting the petitioners as sirdars to a portion of the plot by executing leases or Pattas in their favour cannot be gone into

7 Sub-sec (4) of S 198 at the relevant time empowered the Collector and even now empowers the Collector to cancel the allotment and the lease following it In sub-sec (5) of S 198 every order made by the Collector under sub-sec (4) has been made final Of course the finality is subject to a revision by the Board of Revenue under S 333 The Appellate Authority patently erred in taking

the view that the allotment made in favour of the petitioner could be annulled or interfered with by the Civil court. The reason is that the Legislature in its wisdom has in U P Act provided for a particular forum and resort can be had to that forum alone and to none other

8 In Simlesh Kumar v Gaon Sabha, Uskar Ghazipur AIR 1977 All 360 (1977 All LJ 310) a Full Bench of this Court relying upon Dhulabhai v State of Madhya Pradesh AIR 1969 SC 78 has taken the view that —

The last sub-section of S 198 of the Zamindari Abolition Act declares that that the orders of the Collector are subject to a revision under S 333 final This thus bars a suit or any other proceeding in a civil court. The order passed by the Collector or any order passed by the Board of Revenue in a revision filed against the order of the Collector if any gains finality between the parties These orders settle and conclude the rights of the parties. As such the rights cannot subsequently be reopened

The Full Bench, therefore has taken the view that the consolidation authorities under the Consolidation of Holdings Act have no jurisdiction to cancel or set aside a lease or allotment made by the Land Management Committee under S 198 This applies to the proceedings under the Act as well.

9 We have now to examine the impact of the notification issued by the State Government under S 117(6) of the U P Act upon the rights of the petitioners as sirdars over a portion of the plot. To answer the query the question should be what has been resumed by the State by exercising statutory power under section 117(6)? The answer is all or any one of the things mentioned in S 117(1) and vested in the Gaon Sabha. The key to the solution of the problem is the legislative intent either express or implied in insisting upon the use of the word vest in S 117(1) particularly in the background of the occurrence of the same word in Ss 4 and 6

10 Operation of Ss. 4 and 6 resulted in the complete destruction of all rights title and interest of all the intermediaries in the things catalogued in Sub-cls (i) and (ii) of cl (a) of S 6 Instantaneously those things stood vested in the State of Uttar Pradesh free from all incumbrances thereby it (the State) became an absolute owner S 122A of the U P Act indicates that the Land Management Committee is given the general superintendence management preservation and control of all the land, forest within village boundaries, trees (other than trees in a holding, grove or abadi) fisheries, tanks ponds water channels pathways sabadi sites and hats bazars and melas vested in the Gaon Sabha under S 117 Sub-sec (2) of S 122A indicates that the settling and management of land is one of the incidences of general power of superintendence and management It is therefore implicit in S 122A that the State Government does not purport to transfer its proprietary rights when it vests the things mentioned in S 117(1) by issuing a notification It merely transfers the possession and management of the things for the time being What is implicit in S 122A is made explicit in S 126 wherein the State Government is empowered to issue such orders and directions to the Land Management Committee as may appear necessary for the purposes of the U P Act. It also provides that it shall be the duty of the Land Management Committee and its office bearers to carry out such orders and comply with such directions Apparently the orders and directions can be with regard to the general superintendence and management and other duties entrusted to the Land Management Committee with respect to land etc as referred to in S 122A. In other words, the Land Management Committee is duty bound to discharge its functions of the general superintendence management, preservation and control of the land etc vested in the Gaon Sabha in accordance with the directions and orders issued by the State Government. The preservation of the power of the State Government to issue orders and directions with regard to the management and superintendence of the things vested in the Gaon Sabha is completely destructive of the very idea of the transfer of its proprietary right and interest in the said things by the State Government.

11 In State of U P v Smt. Ramsri AIR 1976 All 121 a Division Bench of this Court has taken the view that the word vest occurring in Section 117(1) merely connotes that on notification by the State Government under the provision passes only possession of the land concerned to the Gaon Sabha or any

other local authority in whose favour such notification is made without any transfer of ownership therein resulting Therefore notwithstanding a notification under S 117( ) the State Government retains ownership in the land. This view has been affirmed by the Supreme Court in Maharaj Singh v State of U P AIR 1976 SC 2602

12 Applying the principle as enunciated by the Supreme Court, the ownership of the things in S 117 is at no stage transferred to the Gaon Sabha. Therefore the question of the acquisition of the proprietary right by the Gaon Sabha over the said things does not arise The consequence of the action under S 117(6) is that the Gaon Sabha is divested of its possession over the things The duty cast upon it to supervise and manage the things comes to an automatic end the moment the possession of the things is taken back from it by the State Government It cannot thereafter exercise any right of management or superintendence However the deprivation of its possession and the right of management do not nullify the actions already taken by it in the course of management of the things Any transaction entered into by it or any action taken by it in furtherance of its obligation to manage and supervise the things will not only continue to exist but also continue to bind the State Government on whose behalf it had hithertofore been managing or superintending the things Therefore if in the course of management the Gaon Sabha settled the plot in dispute with the petitioners that settlement would remain intact and wholly unaffected by the resumption of the possession by the State Government of the things including the land from the Gaon Sabha The land was given to the petitioners by the Gaon Sabha while acting as the Manager of the State Government and the State Government is bound by the acts of its agent

13 Under S 19 of the U P Act all land held or deemed to have been held by certain classes of persons shall be deemed to be settled by the State Government with such persons who shall been titled to take or retain possession of the land as sirdars S 131 provides that every person, who as a consequence of the acquisition of estates becomes a Sirdar under S 19 every person who is admitted as sirdar of any land under or in accordance with the provisions of S 195 or S 196 and every person who in any manner acquires the rights of a sirdar under or in accordance with the provisions of the U P Act or of any other law for the time being in force shall be called a Sirdar and shall have all rights and be subject to liability conferred upon a sirdar by or under the U P Act We have seen that the Gaon Sabha in the purported exercise of power under S 195 admitted the petitioners as sirdars over a portion of the plot Therefore the petitioners have all the rights and they are subject to all the liabilities which the sirdars enjoy and suffer under the U P Act S 190 lays down the conditions under which the interest of a sirdar in a holding or any part thereof shall be extinguished It is thus clear that the interest of a sirdar cannot extinguish except upon the happening of the events mentioned in sub-cls (a) to (f) of S 190 By necessary implication the Statute excludes any other contingency the happening of which may result in the extinguishment of the interest of the sirdar To put it differently if S 190 does not provide that the interest of a sirdar who has come into existence by the operation of S 131(b) that is a person admitted as a sirdar of the land under or in accordance with the provisions of S 195 shall extinguish upon the resumption of the land by the State Government from the Gaon Sabha by taking action under S 117(6) such sirdars shall continue to be sirdars despite the action of the State Government under S 117(6) Therefore the view taken by the Appellate Authority that the rights of the petitioners as sirdars came to an end upon the issuance of the notification under S 117(6) is patently erroneous

14 Section 3 of the Act provides that the State Government may constitute any land which is for the time being comprised in any holding as a reserve forest In the explanation to this section it is provided that the expression holding shall have the meaning assigned to it in the U P Tenancy Act 1939 The authorities below have taken the view that since the petitioners failed to establish that the portion of the plot was ever under cultivation particularly on or before the date of the notification under S 4 of the Act the same cannot be exempted from being declared as a reserved forest. S 3(7) of the U P Tenancy Act, 1939 provides that holding means a

parcel or parcels of land held under one lease engagement or grant, or in the absence of such lease engagement or grant under one tenure and in the case of a thekadar includes the theka area. We have therefore to find out the definition of land for understanding the import of the word holding

15 Land is defined in S 3(10) of the said Act to mean —

Land means land which is let or held for growing of crops, or as grove land or for pasturage. It includes land covered by water used for the purpose of growing singhara or other produce but does not include land for the time being occupied by buildings or appurtenant thereto other than buildings which are improvements.

So in the definition of land, we are concerned with the first part, namely land which is let or held for growing of crops. The definition clearly indicates that the intention for which the letting takes place has merely to be seen. Two situations are provided even in the first part one is land let for growing of crops and the other is land held for growing of crops. Actual growing of crops is not a sine qua non or a condition precedent for attracting the phrase for growing of crops The moment the petitioners were allotted the plot by the Gaon Sabha under S 195 of the U P Act they became sirdars. Obviously the letting took place for growing of crops in future The intention is clarified if we look to the definition of land in the U P Act. In S 3(14) of the Act land is defined to mean

Land except in Ss. 109 143 and 144 and Chapter VI means land held or occupied for purposes connected with agriculture horticulture or animal husbandry which includes pisciculture and poultry farming.

16 In State of U P v Smt. Sarjoo Devi (1977) 3 All LR 447 (AIR 1977 SC 2196) the Supreme Court considered the definition of land in the U P Act and observed that a bare perusal of the word land as contained in S 3(14) of the U P Act would show that it is not necessary for the land to fall within the purview of this definition that it must be actually under cultivation or occupied for purposes connected with agriculture The requirement of the definition is amply satisfied if the land is either held or occupied for purposes connected with agriculture The authorities below therefore, patently erred in taking the view that despite the provisions as contained in S 3 of the Act the plot in dispute could be declared as a reserved forest.

17 In the result, this petition succeeds and is allowed. The order dt. 20th August 1974 passed by the District Judge, Mirzapur (the Appellate Authority) is quashed. The order dt. 24th March 1968 passed by the Forest Settlement Officer Varanasi is also quashed. The petitioners are entitled to their costs.

Petition allowed.

1986 ALL L J 201

S K DHAON J

Ram Sanehi Lal Petitioner v The State Transport Appellate Tribunal U P Lucknow and another Respondents.

Civil Misc Writ Petn. No 3183 of 1985 D/ 26-8 1985

(A) Motor Vehicles Act (4 of 1939), S 58 — Renewal of permit — During proceedings therefor, a fresh route cannot be included in permit

In view of provisions of S 58(2) an existing permit holder who has made an application for the renewal of his permit will be entitled to a preferential claim over others, other conditions being equal But he can have a preferential claim only with respect to a route which was heretofore included in his permit and not with respect to the route which he desires to be included by way of a fresh grant, with respect to the route sought to be included for the first time a permit holder will have to compete on equal terms with the other rival competitors and the question of his getting any preference over others will not arise This provision, therefore, is also indicative of the legislative intent that at the stage of the proceedings for the renewal of a permit under S 58 a fresh route cannot be included in the permit. (Para 6)

(B) Motor Vehicles Act (4 of 1939), S 57(8) — New route — Addition of — Its life is coterminus with life of permit itself

---

KC/AD/G234 85/TGD/SNV

If a new route in an existing permit is included, the permit holder thereof cannot operate his vehicle on the newly added route for a period beyond the life of the permit itself. The life of the permit even with respect to the newly added route will be conterminous with the life of the permit itself. (Para 8)

Cases Referred Chronological Paras

AIR 1957 SC 489 5

L. P. Nathani, for Petitioner. Standing Counsel, for Respondents.

ORDER — This petition at the instance of an existing permit holder raises the question whether the relevant Transport Authority has jurisdiction to include an additional route in a stage carriage permit in proceedings under S. 58 of the M.V. Act, 1939 (hereinafter referred to as the Act) for the renewal of that permit.

2. A permanent stage carriage permit was held by the petitioner on the route Babarpur Sahayal via. Dibyapur and Dinwamau (hereinafter referred to as the route). In Feb. 1977 Transport Authority concerned deleted the portion of the route between Babarpur and Dinwamau from the permit as, according to it, the said portion formed part of a notified route. The petitioner acquiesced in the act of the deletion of the said portion from his route. The Transport Authority on 24-3-1980 renewed the permit for the portion between Sahayal and Dinwamau only. The petitioner again remained inactive and continued to operate his vehicle on the said portion of the route only during the life of the permit. The renewed permit was to expire on 30th Dec. 1982. The petitioner made an application and prayed that the same may be renewed for the portion of the route between Sahayal-Dibyapur i.e. the original route Sahayal-Dinwamau plus the portion between Dinwamau and Dibyapur. The Regional Transport Authority renewed the permit for the portion between Sahayal and Dinwamau only. In appeal, the appellate Tribunal maintained the order of the Transport Authority and took the view that the permit could be renewed only for the portion of the route between Sahayal and Dinwamau.

3. Section 58(2) of the Act provides that a permit may be renewed on an application made and disposed of as if it were an application for a permit. The submission is based on this provision. It is contended that the procedure for the grant of a permit as envisaged in sub-s. (3) of S. 57 having been gone through, there was no impediment in the way of the authorities below to renew the permit for the route as prayed for and they failed to exercise the jurisdiction vested in them by not doing so. This contention, though attractive, at the first blush cannot withstand even a slight scrutiny. Sub-sec. (4) of S. 58 (added by Act No. 56 of 1969) provides, inter alia, that where a permit has been renewed after the expiry of the period thereof such renewal shall have effect from the date of such expiry. Obviously this provision can have no application in a situation where a permit is being granted for the first time. In sub-sec. (1) of S. 58 it is provided that stage carriage permit shall be effective without renewal for such period, not less than 3 years and not more than five years, as the relevant Transport Authority may specify in the permit. The provisions as contained in sub-secs. (1) and (4) of S. 58 cannot be reconciled with each other if it is accepted that at the stage of the renewal of a permit a new route can be included in it. It cannot be the intention of the legislature that a permit, the document issued by a competent authority (S. 2(20) of the Act) can have two periods of validity. One with respect to the route for which it is being renewed and the other with respect to the route which is being included for the first time by way of a fresh grant. Such an interpretation will not only violate the well known principle of harmonious construction of a statute but will also make the provisions of the Act unworkable.

4. In the instant case if the prayer of the petitioner is accepted, the result will be that the permit for the portion of the route between Sahayal and Dinwamau will be effective with effect from 31st Dec. 1982 for a period of three years or five years, as the case may be, while the same document will be valid for the portion of the route between Dinwamau and Dibyapur for a period of three years or five years, as the case may be, with effect from the date of the issue of the same for that portion. In any case the permit cannot be made effective for the portion between Dinwamau and Dibyapur with effect from 31st Dec. 1982.

5. Before the addition of sub-s. (4) in S. 58

of the Act a matter came up before the Supreme Court where the controversy was whether a permit renewed under sub-sec (2) of S 58 was a continuation of the old permit or should be treated a fresh permit. In the Supreme Court also the submission was based on sub-sec (2) of S 58 After taking into consideration the relevant rules particularly R. 184 framed by the State of Madras, their Lordships observed —

a reading of the relevant provisions of the Act and of the Rules leads indubitably to the conclusion that a renewal is a continuation of the permit previously granted. The fact that the grant of the renewal is not a matter of course or that is open to the authorities to impose fresh conditions at the time of the renewal does not, when the permit is in fact renewed, alter its character as a renewal.

(See V C.K. Bus Service Ltd v The Regional Transport Authority, Coimbatore AIR 1957 SC 489) This case not only fortifies the view taken by me but also sounds a death-knell of the argument of the learned counsel for the petitioner that a route can be added as it is nothing else but a condition of permit.

6 The second proviso to sub-sec (2) of S 58 reads

Provided further that, other conditions being equal an application for renewal shall be given preference over new applications for permits.

In a normal situation, an application for the grant of fresh permanent stage carriage permit for a particular route can also be made when a vacancy occurs on that route on account of the expiry of the life of an existing permit. In view of the aforequoted provision, an existing permit holder who has made an application for the renewal of his permit, will be entitled to a preferential claim over others, other conditions being equal. But he can have a preferential claim only with respect to a route which was heretofore included in his permit and not with respect to the route which he desires to be included by way of a fresh grant. With respect to the route sought to be included for the first time a permit holder will have to compete on equal terms with the other rival competitors and the question of his getting any preference over other will not arise. This will lead to an anomalous situation. This provision, therefore, is also indicative of the legislative intent that at the stage of the proceedings for the renewal of a permit under S 58 of the Act, a fresh route cannot be included in the permit.

7 The case set up by the petitioner is that the scheme which covers the portion of the route between Dinwamau and Dibrapur itself provides that the petitioner and some other persons named therein alone can be permitted to operate their vehicles on that portion of the route. The submission is that all other persons being excluded the question of fresh competitors being considered for permits for that portion does not arise. This particular feature in this particular case will not and should not detract us from considering the scheme of the Act and the legislative intent.

8 Sub-sec (8) of S 57 of the Act in substance provides that an application to vary the condition of a stage carriage permit by including a new route or area shall be treated as if an application for the grant of a new permit. The petitioner cannot take advantage of this provision for more than one reason. First, no such request was made by the petitioner before the Transport Authority concerned. No such argument was advanced by and on behalf of the petitioner either before the Transport Authority or before the Appellate Tribunal. Even in this Court neither any averment has been made nor any ground to that effect has been taken. This was a matter if at all, in the discretion of the two authorities below it cannot be said that they either acted without jurisdiction or committed any illegality, much less a patent illegality in not adverting to this question. Secondly the aforementioned provision cannot be invoked with respect to a permit which has no subsisting life in it. If a new route in an existing permit is included, the permit holder thereof cannot operate his vehicle on the newly added route for a period beyond the life of the permit itself. The life of the permit even with respect to the newly added route will be coterminus with the life of the permit itself. In this case, as indicated above the permit was valid till 30th Dec. 1982 and the matter of the renewal of the permit came up for consideration before the Transport Authority on 24th Oct. 1983

9 This petition lacks merit and is dismissed summarily. The interim order passed by a

learned Single Judge of this Court dated 14th Mar 1985 is hereby vacated.

Petition dismissed.

1986 ALL. L. J 204

V. K. MEHROTRA, J

Smt. Jayanti Devi, Petitioner v District Judge, Moradabad and another Respondents.

Civil Misc. Writ No 11470 of 1981 D/ 22 8 1985

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 34 — Appellate authority — Powers of

The powers of the appellate authority are co-extensive with that of the Prescribed Authority and where the appellate authority on consideration of the material on record comes to a different conclusion from the one arrived at by the Prescribed Authority it cannot be said that the order suffers from manifest error of law If the conclusion of the Prescribed Authority is found to be based upon relevant material on record, the mere fact that each and every reason given by the Prescribed Authority is not met by the Appellate Authority in its order cannot render it legally infirm. The order of the Appellate Authority need not come in close quarters with that of the Prescribed Authority 1982 All LJ 1435 Rel on (Para 6)

Cases Referred Chronological Paras

1982 All LJ 1435 6

T P Asthana and Ganga Singh for Petitioner J C. Bhardwaj, Rajesh Tandon, Standing Counsel for Respondents.

ORDER — Smt. Jayanti Devi, Petitioner is a tenant in an accommodation of which the second respondent Har Pyari Devi is the landlord, within the meaning of that term in U P Act 13 of 1972 On March 12 1976 an application was made under section 21(1)(a) of the Act by her for release of the portion in the tenancy of the petitioner It was founded on the basis that the accommodation in the possession of the landlady was inadequate for her needs and having regard to the number of members in her family further accommodation was needed by her She prayed that the accommodation in the possession of the petitioner be released in her favour The petitioner resisted the claim by pleading principally, that the accommodation in possession of the landlady was sufficient and that her need was not bona fide

2 The case set up by the landlady was that apart from herself, after the death of her husband, her son Arjun Kumar who was married with one Suneeta and an unmarried daughter Km. Kamlesh, were living with her The petitioner set up the case that it was only the landlady and her unmarried daughter who were residing at Moradabad and that Arjun Kumar was living at Bareilly and carrying on business there

3 The Prescribed Authority went into the evidence adduced by the parties in the case He concluded that the total number of persons who were living at Moradabad was two which included the landlady and her unmarried daughter Km. Kamlesh On the finding, he concluded that the accommodation in possession of the landlady was sufficient for her needs and with this finding the prayer for release was rejected.

4 In appeal the learned District Judge appreciated the evidence afresh and came to the conclusion that number of persons living at Moradabad was four as pleaded by the landlady He also concluded that the accommodation at the disposal of the landlady was not sufficient for the newly married son Arjun Kumar Reversing the conclusion of the Prescribed Authority the learned District Judge allowed the application for release and granted a month's time to the tenant to vacate the accommodation.

5 It has been urged on behalf of the tenant petitioner that the learned District Judge was in error in concluding that the number of members of the family of the landlady living at Moradabad was four The argument, firstly is that the documents which had been considered by the Prescribed Authority had not been adverted to by the learned District Judge. The learned counsel for the petitioner had failed to point out anything in the order of the Prescribed Authority from which it may

appear that any document filed on behalf of the petitioner was relied upon by the Prescribed Authority. He referred to an affidavit of the Landlady (Paper No. A/6/5) in paragraph 17 whereof, according to the petitioner there is an admission of the landlady. The learned District Judge has referred to this affidavit but has drawn a conclusion different from the one drawn by the Prescribed Authority. It cannot be said that the learned District Judge has not considered the document which was relied upon by the Prescribed Authority in favour of the petitioner while disposing of the appeal.

6. The second argument of the learned counsel is that the Prescribed Authority having come to a conclusion in favour of the tenant on appreciation of evidence, it is not open to the District Judge in appeal to reverse the same without meeting the reasons contained in the order of the Prescribed Authority. This argument is not sustainable. The powers of the appellate authority are co-extensive with that of the Prescribed Authority and where the appellate authority on consideration of the material on record, comes to a different conclusion from the one arrived at by the Prescribed Authority, it cannot be said that the order suffers from manifest error of law. If, as here, the conclusion of the Prescribed Authority is found to be based upon relevant material on record, the mere fact that each and every reason given by the Prescribed Authority is not met by the Appellate Authority in its order cannot render it legally infirm. The order of the Appellate Authority need not, as it were, come in close quarters with that of the Prescribed Authority. In Ram Raj Ahir v. Hirdaya Narain Rai 1982 All LJ 1435 this principle has been accepted in the case of an appeal under section 100 C.P.C. It applies with greater vigour when High Court is examining an order in exercise of its jurisdiction under Art. 226 of the Constitution.

7. The only submission made by the learned counsel is unacceptable for vitiating the order passed by the Appellate Authority. The writ petition is dismissed but I leave the parties to bear their own costs.

Petition dismissed.

1986 ALL. L. J. 205

M. N. SHUKLA Ag. C. J. AND
B. D. AGARWAL, J.

Ram Autar Petitioner v. Chancellor Meerut University, Lucknow and others, Respondents.

Civil Misc. Writ Petn. No. 5421 of 1982. D/ 4-9-1984.

U. P. State Universities Act (Presi. Act 10 of 1973), S. 50(1) — Statutes under — First Statutes of University of Meerut (1977), Statute 11.13(8) — Exemption under — Teaching experience in other University cannot be counted.

For being able to be eligible to the benefit of cl. (8) of Statute 11.13 experience gained of teaching in a college affiliated to another University cannot count because cl. (8) envisages experience in a college affiliated to the University of Meerut itself. The statutes having been drawn by the Executive screened through the relevant provisions lead to the irresistible conclusion that cl. (8) could not have been intended to refer to any University other than the University of Meerut, or to any affiliated college other than college affiliated to this University. The construction cannot so strain the words as to include cases plainly omitted from the natural meaning of the language employed. (Para 18)

Cases Referred	Chronological	Paras
AIR 1984 SC 1420		19
AIR 1982 SC 149	1981 Suppl. SCC 87	22
AIR 1981 SC 2059	(1981) 4 SCC 660	22
1980 All LJ 571	AIR 1980 SC 2141	1980 Lab IC 692 7
AIR 1980 SC 820	(1980) 2 SCC 768	19
AIR 1971 SC 1762	(1971) 2 SCC 293	19
AIR 1959 SC 1331		19
(1951) 2 All ER 839	(1951) 2 TLR 935	(1952) AC 189 (HL) Magor and St. Mellons Rural District Council v. Newport Corporation 19

N. C. Rajvanshi and M. D. Singh, for Petitioner. B. D. Mandhyan, A. K. Sharma and Satya Prakash, for Respondents.

B. D. AGARWAL, J. — Vacancy arose against the post of a Lecturer in Military

Science in the S S V Degree College Hapur affiliated to the University of Meerut. The petitioner and he respondent 5 amongst others were candidates for the post. The candidates were interviewed by the Selection Committee on Aug. 11 1981 The Selection Committee drew a panel in which the respondent 5 was placed at position No and the petitioner was shown at the No 2 The petitioner represented that the respondent 5 did not possess the minimum prescribed qualifications and the experience for the appointment. The Vice-Chancellor however gave approval on Aug. 20 1981 and the Management of the College appointed accordingly the respondent No 5 to the post. A reference was made by the petitioner under S 68 of the U P Universities Act, 1973 (hereinafter referred to as the Act) to the Chancellor who rejected it under the impugned order dt. Mar 27 1982 observing —

Sri Ram Autar has also questioned the selection and appointmen of Sri S P Singh on the ground that he was not qualified for the post Sri Singh had ten years teaching experience of permanent lecturership in Military Studies. He was fully qualified under Statutes 11 13(8) of Meerut University In view of these facts it cannot be said that Sri S P Singh was not qualified for the post.

2 Aggrieved the petitioner has approached this Court under Art. 226 of the Constitution seeking the writ of certiorari to quash the order of the Chancellor

3 In accordance with S 31(1) of the Act, a teacher is appointed by the Management of the College on the recommendation of the Selection Committee The Selection Committee consists of the Head of the Management or a member of the Management nominated by him who shall be the Chairman, the Principal of the College and another teacher of the College nominated by the Principal and two Experts to be nominated by the Vice-Chancellor vide S 31(4)(a) No teacher recommended by the Selection Committee shall be appointed by the Management of an affiliated College unless prior approval of the Vice-Chancellor has been obtained under S 31(11)(a) Cl (c) lays down —

The Vice-Chancellor if he is satisfied that the candidate recommended by the Selection Committee does not possess the minimum qualifications or experience prescribed or that the procedure laid down in the Act for the selection of the teacher has not been followed shall convey to the Management his disapproval.

4 According to Section 49 the statutes may provide for any matter relating to the University and shall in particular provide for recruitment (including minimum qualifications and experience) of teachers of affiliated colleges. The First Statutes framed by the State Government under S 50(1) relating to the various Universities of the State came into force on Aug 1 1975 These were replaced by the First Statutes of the University of Meerut framed by the State Government with effect from May 1 1977 These were amended later by the Meerut University (Fifth Amendment) Statutes, 1980 Published in the Gazette Extraordinary dated September 9 1980

5 The Statute 11 13(1) of the First Statutes of the University of Meerut, 1977 prescribes the minimum qualifications for the recruitment of a teacher in the Faculty of Arts to which the subject of Military Science pertains as under —

11 13(1) In the case of any college affiliated to the University the following shall be the minimum qualifications for the post of a Lecturer in the Faculty of Arts (Except the Department of Music the Faculty of Commerce and the Faculty of Science) namely (a) an M.Phil. degree or a recognised degree beyond the Masters level or published work indicating the capacity of the candidate for independent research work and the (b) consistently good academic record with at least first or second class Masters degree or an equivalent degree of a foreign University in a relevant subject.

Clause 6 provides —

(6) Where no candidate possessing the qualification prescribed in sub-cl. (a) of cl. (1) or sub-cl. (a) of cl. (2) is available or considered suitable the college on the recommendation of the Selection Committee may appoint a person possessing a consistently good academic record on the condition that he obtains such qualifications within five years of his appointment, failing which he shall not be able to earn future increments until he fulfils the requirements.

Cl (8) which is material makes provision for exemption in certain situation described as under —

(8) Where a confirmed teacher of an affiliated college having at least five years teaching experience who fulfilled the qualifications prescribed in the Statutes or Ordinance of the University at the time of his initial appointment to the post of a Lecturer in that college, is a candidate for the post of a lecturer in any other affiliated college or is after retrenchment from the college where he served, a candidate for the post of lecturer in the same or any other affiliated college, the qualifications laid down in this Statute shall not be insisted upon in this respect.

6 The academic qualifications of the petitioner and the respondent 5 respectively are —

Petitioner —

M.A. (Military Science)	Ist Division.
B.A.	Ist Division. (61 4%)
Intermediate	II Division. (47 8%)
High School	II Division.

Respondent No 5 —

M.A. (Military Science)	III Div (40 4%)
B.A.	III Div (41 2%)
Intermediate	III Div
High School	III Div

7 The respondent 5 was appointed Lecturer of Military Studies with effect from Sept. 1 1971 (1971 72) in the D A.V College, Azamgarh affiliated to the Gorakhpur University and he thus has experience of teaching this subject in the College for over five years. The bone of contention between the parties is whether this experience qualifies the respondent 5 for exemption under Statute 11 13(8) of the Meerut University quoted above. Obviously the respondent 5 cannot claim to have consistently good academic record since he secured neither first class, nor second class Master's Degree in the concerned subject. In the case of Dr J P Kulshrestha v Chancellor Allahabad University, 1980 All LJ 571 (AIR 1980 SC 2141) the question arose in regard to the interpretation of expression First or High Second Class Master's Degree then appearing in the relevant Statutes. The Supreme Court observed that the mode of determination the meaning of High Second Class mark could be to draw a line at mid point and the marks above and below that line would be high and low second class respectively. This has now become unnecessary in view of the amendment in the Statutes we are concerned with on Sept. 1 1980 and since the Section in the present took place after this amendment had come into force.

8 On behalf of the petitioner Sri N C. Rajvanshi assisted by Sri M. D Singh the learned counsel contended that the respondent 5 is not eligible to the benefit of exemption under cl. (8) of the Statute 11 13. Their argument is that experience gained of teaching in a college affiliated to another University cannot count because cl. (8) envisages experience in a college affiliated to the University of Meerut itself. Sri S N. Verma learned counsel for the respondent 5 submits on the contrary that the expression affiliated College be given a broad interpretation so as not to exclude the teaching experience in any college irrespective of consideration as to which University it is affiliated.

9 The expression University according to S 2(20) of the Act means an existing University or a new University established after the commencement of this Act under S 4. We are not concerned here with a new University because the Gorakhpur University was established in 1956 and the Meerut University in 1965 — both prior to the commencement of the Act. Existing University is defined in S 2(8) as meaning the University of Lucknow Allahabad, Agra, Gorakhpur Kanpur or Meerut or the Sampurnanand Sanskrit Vishwavidalaya, as the case may be. Section 2(2) moreover specifies that affiliated college means an institution affiliated to the University in accordance with the provisions of this Act and Statutes of that University. The First Statutes of the University of Meerut, 1977 referred above also contain definition clause. Clause 1.03(d) defines University as meaning the 'University of Meerut' and then there is

the usual residuary provision in sub-cl (e) which says that the words and expressions used but not defined in these Statutes shall have, unless the context otherwise requires, the meaning assigned to them in the Act.

10 Now on substituting these definition clauses contained in the Act/the Statutes. Cl (8) will in so far as relevant reads as follows —

Where a confirmed teacher of a college affiliated to the University of Meerut having at least five years, teaching experience who fulfilled the qualification prescribed in the Statutes or Ordinances of the University of Meerut at the time of his initial appointment to the post of a Lecturer in that College is a candidate for the post of a lecturer in any other college affiliated to the University of Meerut the qualifications laid down in this Statute shall not be insisted upon in this respect.

11 This in our opinion is the plain meaning of cl. (8) The well recognised rule of construction is to intend the Legislature to have meant what they have actually expressed. The object is to discover the true intention, but the intention of Parliament must be deduced from the language used. (Maxwell Interpretation of Statutes. (12th Edition) (P 28)) The construction of a statute must not so strain the words as to include cases plainly omitted from the dictionary meaning of the language (P 92 ibid) The cardinal rule for the construction of Acts of Parliament, says Craies on Statute Law (1971) Pp 64-65 is that they should be construed according to the intention expressed in the Acts themselves. If the words of the Statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law giver The learned Author observes further where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.

12 In this interpretation of cl. (8) taking into consideration the dictionary meaning assigned in the Act/the Statutes, we are fortified by the kind of language used by the same statute framing authority (the State Government at other places in these same Statutes. It is not without significance that wherever the State Government intended that affiliation of a college to a particular University be not the relevant factor it has employed specific language to express that intention. Cl. 18 10 for instance in prescribing the rules for determining the seniority of Principals and other teachers of affiliated colleges says —

(e) Service in a substantive capacity in another University or another degree or post graduate college whether affiliated to or associated with the University or another University established by law shall be added to his length of service.

13 Sri Verma urged that to carry out the intention behind namely for enabling the appointee to have the benefit of seniority the language could not be otherwise How may this very where instead the provision concerns past experience of teaching in an institution? There will obviously have been in that event some such expression as another University or another college and whether affiliated to the University or another University used in cl (8) of Statute 11 13 placed in juxtaposition to cl. 18 10(e) it becomes abundantly clear that consideration of any other University or College is excluded from the purview of cl. 11 13(8)

14 In regard to computation of seniority for teachers appointed to the University likewise care has been taken to provide in statute 18 05(e) that Service against an administrative appointment in any University or institution shall not count for the purposes of seniority Cl. (e) of Statute 18 05 is even more explicit in this behalf —

When any teacher holding substantive post in any University (other than the University of Meerut) or in any constituent college or any Institute is appointed to a post of corresponding rank or grade in the University the period of service rendered by such teacher in that grade or rank in such University shall be added to his length of service

15 Statute 17 18 which prescribes that A teacher of an affiliated college dismissed on any of the grounds mentioned in cl (b) cl (c) cl (d) or cl (e) of Statute 17 04(1) shall not be re-employed in any University or in any college affiliated to or associated with any University

in any capacity is also in point. Similar is the case with Statute 16 28 concerning teachers of the University as distinct from affiliated colleges. The expression the University also finds place in Statute 5 06 (1) which provides that the academic council shall have the powers, inter alia, to advice the Executive Council in regard to the qualifications to be possessed by persons imparting instruction in particular subjects for the various degrees and diplomas of the University meaning thereby necessarily the University of Meerut. The expression the University in cl (8) bears a definite dictionary meaning as per definition given in Cl 1 03 (d) a departure therefrom and to read in place thereof any University unwarranted it would be incongruous moreover to interpret the words the Statutes or Ordinances of the University as meaning the Statutes or Ordinances of any other University. The expression affiliated being itself relative pertains to the particular University of which these statutes are namely the Meerut University.

16 Learned Counsel points that the definition clause 1 03 contains the usual rider unless the context otherwise requires. We are conscious of the importance which the context has in matters of this kind. In the words of Reed Dickerson The interpretation and Application of Statutes (1975) P 11

Although subordinate, the role of context is highly significant. An utterance taken out of the specific context that it presupposes is at best inadequately oriented and over general. Not only does the context limit the normal sweep of primary (semantical) meaning, but it often also selects among the alternative potentialities of primary meaning. The elements of context that perform the latter function are usually factual assumptions or ethical norms that are either expressly recited in the document or more usually judicially noticed. They effect meaning by turning the potentialities of multiple or alternative primary meanings into the actualities of a single relevant primary meaning.

17 But what does the context wherein clause (8) is placed denote? Statute 11 13(1) prescribes the minimum qualifications for the appointment of a teacher in an affiliated college. Section 31(1) of the Act insists upon these qualifications being duly observed, the Vice Chancellor shall not accord approval to any appointment if he finds that the minimum qualifications or the experience prescribed are lacking vide S 31(1)(c) The candidate has to have consistently good academic record with at least first or second class Master's degree in the subject. This is the context in which cl (8) provides an exemption. The rigour of the normal requirement for the staff recruited to teach in higher classes is relaxed to some extent thereunder but this can obtain only in the given situation. It hardly admits of liberal construction by importing words which the Statutes framing authority has designedly avoided. The exemption in our view must be construed strictly.

18 In the ordinary course Legislature is assumed to be aware of its own distinctions. If we find that in previous legislation two different words have been designedly used to express two distinct things, we may assume that in subsequent statutes the legislature has not lost sight of the distinction unformally observed in the preceding statutes. (Craies on Statute Law (7th Edition) p 174) Whereas, in the present, we are concerned with distinct words used in the same Statutes, there is a presumption that the same words or phrase bears the same meaning throughout the same statute. The authorities are unanimous in regard to the existence of such a presumption. See Maxwell Interpretation of Statutes (12th edition) p. 278 Cross Statutory Interpretation (1976) P 100 Craies on Statute Law (1971) pp 168-69 though they qualify this with a rule of caution namely that this presumption by itself is not of much weight and in the ultimate analysis this is a matter dependent on the scheme adopted in the concerned statute. We have in the light of these principles and keeping also in view that these are Statutes drawn by the Executive screened through the relevant provisions which lead to the irresistible conclusion that cl (8) could not have been intended to refer to any University other than the University of Meerut, or to any affiliated college other than college affiliated to this University. The construction cannot so strain the words as to include cases plainly omitted from the natural meaning of the language employed.

19 Sri Verma refers then to S 4(4) of the Act and contends that this empowers the State Government to increase or diminish the area

of University The affiliation of certain colleges has changed with the reconstitution of the area of various universities. It is urged that if A were appointed in a college affiliated earlier say to Agra University and later that college gets affiliated to Meerut University he may not according to this construction avail the benefit of experience as teacher in that other college similarly if say the appointment was made in some college in 1963 when the Meerut University was not established, then in that event he would not be eligible unless he has put in requisite number of years in a college affiliated to this University These considerations do not oblige us to stretch the language of cl (8) otherwise plain and unambiguous so as to include within its ambit the experience of teaching in any college of whatever standard that might be The framers have taken adequate care to ensure by use of express language that experience in a college affiliated to this University will alone count provided further it is established that the candidate fulfilled the qualifications prescribed in the Statutes or Ordinances at the time of his initial appointment. In order that this clause may be interpreted in the way the learned counsel suggests we have to add words to it. This the rules of interpretation do not permit us to do unless the section as it stands is meaningless or of doubtful meaning neither of which we think it is (British India General Insurance Co Ltd. v Captain Itbar Singh AIR 1959 SC 1331 at p 1334) We cannot in the circumstances embark on a voyage of discovery to insert on our own what else is seemingly reasonable to be brought within this clause Magor and St. Mellons Rural District Council v Newport Corporation (1951) 2 All ER 839 Institutional preference for standards is not an unknown phenomenon University wise classification for post graduate medical education subject to certain percentage kept open for meritorious performance regardless of university State and the like has been upheld (See D N Chanchal (1971) 2 SCC 293 (AIR 1971 SC 1762) Dr Jagdish Saran (1980) 2 SCC 768 (AIR 1980 SC 820) Dr Pradeep Jain v Union of India, AIR 1984 SC 1420)

The test that commends us for these reasons for acceptance in the present is thus stated by Reed Dickerson in the Interpretation and Application of Statutes

The important interpretative problem is to determine in the light of the text and its proper context, whether the facts suggesting that a normal reading of the language would produce an absurdity an inequity or unreasonableness create a presumption strong enough that the most plausible alternative is to conclude that the legislature did not mean what it expressly said. This is a matter of judgment under the circumstances and specific results are hard to forecast. Although the presumption against absurdity is strong, the presumptions against unfairness and unreasonableness, depending on degree, are usually weak. Normal statutes, especially long and complicated ones, bristle with at least minor inequities to the plaint where there is generally only a low statistical probability that the legislature intended something other than what it said.

On this basis, a plain meaning rule may be valid, even apart from excluding materials that lie beyond proper context, if it seeks to emphasise that the presumption that the legislature meant what it expressly said is not overcome merely because the result that it calls for would produce a mild absurdity some unfairness, or less beneficial results than the manifest purpose of the statute would seem to call for

20 We, therefore, find that the respondent 5 does not fulfill the prescribed minimum qualification for appointment as Lecturer in Military Science in an affiliated college of the Meerut University The Vice Chancellor did not act in conformity with S 31(11)(c) read with Statute 11 13 of this university in according approval to this appointment. The impugned order made by the chancellor is patently erroneous having been passed without consideration to these mandatory provisions.

21 This may appear harsh to the respondent No 5 but the court, we are afraid may not help this. Crawford in Statutory Construction (1940) P 344 observes —

as a general rule the courts have no power to add to or to change, alter or eliminate the words which the legislature has incorporated in a statute, not even in order to provide for certain contingencies which the legislature failed to meet, or to avoid hardship flowing from the language used.

or to advance the remedy of the statute

(Emphasis supplied)

22 It is well settled that it is not the duty of the court to import words which have been omitted deliberately or intentionally in order to fill up a gap or supply omission to fit in with the ideology or concept of the judge concerned. The words and the language used must be given their natural meaning and interpreted in their ordinary and popular sense. observed Fazal Ali, J in S P Gupta v Union of India 1981 Suppl SCC 87 at p 377 (AIR 1982 SC 149 at p 30) In Motor Owners Insurance Co Ltd v Jadavji Keshavji Modi (1981) 4 SCC 666 at p 667 (AIR 1981 SC 2059 at Pp 2063-64) the Supreme Court speaking through Chandrachud C J reiterated —

Both by common practice and the application of recognised rules of statutory construction harsh consequences following upon an interpretation are not considered as the governing factor in the construction of a statute unless its language is equivocal and ambiguous. If the language is plain and capable of one interpretation only we will not be justified in reading into the words of the Act a meaning which does not follow naturally from the language used by the legislature

(Emphasis ours)

23 For the reasons the writ petition is allowed, the order dt. Mar 27 1982 (Annexure III to the writ petition) passed by the respondent 1 in so far as it relates to the petitioner is quashed and a direction is issued to the effect that the said respondent 1 the Chancellor University of Meerut shall redecide the representation made by the petitioner in the light of the observations made by us.

24 The parties shall bear their own costs.

25 The stay order dated May 10 1982 stands vacated.

Petition allowed.

1986 ALL. L J 211

V P MATHUR, J

Dhirendra Nath Mukerjee Petitioner

Amar Nath Mukerjee. Respondent.

Civil Revn. No 96 of 1984 D/ 26-2 1985

Civil P C (5 of 1908), O 6, R 17 — Amendment of plaint — Amendment by way of addition to facts already on record to elucidate the matter and not in contradiction with them and not changing the case so as to make new claim on basis of new facts — Can be allowed.

In the present case the plaintiff simply sued for his share in the sale consideration with the allegations that he was entitled to 1/4th share in the property having been owned by his father Subsequently he thought that since his mother and three sisters were also alive when the father died, they would also be inheriting equal shares in the property. He had sought amendment of this fact and wanted to bring on record the further fact that all the co-sharers had transferred their rights and interest to the mother and the mother ultimately executed the will in favour of all the four sons excluding daughters and in this manner the plaintiff still remained entitled to 1/4th share.

Held that the amendment which was sought, retains the subject matter of the suit as it was and the cause of action also remains the same. It is not necessary that out of the bundle of facts all should remain intact. The amendment in some of them is permissible, if it is by way of addition of facts to elucidate the matter The present amendment was not in contradiction with the facts already on record. Therefore, it cannot be said to completely change the case inasmuch as no new claim was made on a new basis constituted by new facts. 1984 All LJ 102 (SC) Foll. (Para 10)

Cases Referred	Chronological Paras
1984 All LJ 102 (1984) 3 SCC 352 AIR 1985 SC 817	9
AIR 1982 Pat 200	7

---

*Against order of Maqsood Ahmad Addl. Civil Judge, Allahabad, D/ 7 11 1983

EC/HC/C560/85/MBR

1978 All LJ 422	6
AIR 1973 SC 1096	12
AIR 1967 SC 96	8 9
AIR 1965 All 590 (FB)	7
AIR 1964 SC 497	11 12
(1962) 2 All ER 24 (1962) 1 WLR 200 (CA) Robinson v Unicos Property Corporation Ltd.	8 9
(1873) 8 CP 107 42 LJ CP 98 28 LT 32 Cooke v Gill	8
AIR 1922 PC 249	5

S K Tewari Deva Sharma and Jitendra Tewari for Petitioner A K Banerjee for Respondent

ORDER — This revision is directed against an order passed on 7 11 83 by the Additional Civil Judge Allahabad in suit No 150 of 1982 whereby he has allowed an application for amendment in the plaint and has repelled the objections filed by the present revisionist.

2 The parties to the suit are real brothers being sons of late Sri A. C. Mukerjee The brief facts of the matter were that Sri A.C. Mukerjee had left bunglow No 18 Tagore Town Allahabad consisting of residential portion and open land, of which the plaintiff along with the defendant and two other brothers became co-owner to the extent of 1/4th share A part of the open land was found by the four brothers to be of no use to them and, therefore it was agreed that it may be sold. It was stipulated that the defendant would for and on behalf of the vendors receive cheques from the vendees for the entire sale consideration in his name and encash these cheques and would pay 1/4th amount of the sale consideration to each of the brothers including the plaintiff retaining his 1/4th share to himself. The sale deeds were executed and the defendant obtained the entire sale consideration of Rs. 87 000/ through cheques from the vendees. He encashed these cheques and is retaining the entire amount without making payment of the share of other brothers. The plaintiff therefore, sued for a decree for Rs. 21 750/ being his 1/4th share in the sale consideration and Rs. 3 250/ as interest thereon, total Rs. 25 000/ with costs of the suit.

3 For a long time the defendant did not file written statement. The record shows that the written statement was ultimately filed on 2 1 84 Before this, however the plaintiff moved application for amendment in the plaint seeking to incorporate three additional paras 6-A, 6-B and 6-C and making some additions in para No 6 The original contention of the plaintiff was that Sri A. C. Mukerjee was the sole owner of the entire land and constructions of the premises No 18 Tagore Town Allahabad, and he died on 2 5-65 leaving his four sons including the plaintiff and defendant as his heirs and successors and in this manner all he four sons inherited the property By amendment it is now sought to be mentioned that beside the four sons the widow of late Sri A. C. Mukerjee and his daughters Smt. Maya Gangoli, Smt. Chinmoyee Basu and Smt. Renu Banerji were also co-sharers and inherited the property In paras No 6-A, 6-B and 6-C it ought to be mentioned that all the remaining seven heirs gifted their entire shares in favour of the widow of the deceased through a registered deed of gift, dt. 21 7 69 thus Smt. Shiv Dasi Devi widow of late Sri A. C. Mukerjee became exclusive owner of the entire bunglow No 18 Tagore Town Allahabad. This lady however executed a will on 23-9-69 bequeathing the property absolutely to the four sons to the exclusion of the daughters and in this manner the four sons after the demise of Smt. Shiv Dasi Devi which took place on 19-5-75 became co-sharers in equal shares. The relief is not changed.

4 The learned court below came to the conclusion that the amendment did not change the subject matter of the suit, the relief or even the cause of action and, therefore, he allowed it. Against this order the present revision has been filed.

5 The contention of the learned counsel for the revisionist is that this amendment could not have been allowed. In the case of Ma Shwe Mya v Maung Mo Maung AIR 1922 PC 249 it has been laid down that all rules of Court are nothing but provisions intended to secure to the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose so that full powers of amendment must be enjoyed and should always be liberally exercised but none the-less no power has been given to enable one distinct cause of action to

be substituted for another nor to change, by amendment, the subject matter of the suit. In this Privy Council case the plaintiff had sued for specific performance of a verbal agreement allegedly made in 1912. The suit was filed in 1915. The court found the verbal agreement not proved. The plaintiff then applied for amendment of the plaint by claiming damages for breach of an earlier contract allegedly arrived in the year 1903. It was held that it was not open to the court to permit a new case to be made out and the amendment was refused.

6 We will have, therefore, to find out whether by the amendment which has been allowed by the court below the subject matter of the suit and cause of action get changed or whether they remain the same. My attention is drawn to the case of Ram Agya v Bhanu Prakash 1978 All LJ 422 where it has been held that one of the basic tests is to find out whether the evidence required to prove the case after the amendment would be in any way different from the one that was required to prove the case as it originally stood before the amendment. It was a case in which the plaintiff had come alleging that the marriage had taken place before an idol and by amendment the case v as sought to be changed by saying that the marriage had taken place according to Hindu rites. The Court came to the conclusion that the evidence which was required to be given as the plaint originally stood would be entirely different from the evidence which will now be required to be given if the amendment is allowed and taking it to be the basic test, it rejected the application for amendment.

7 In the case of Zila Parishad v Smt. Shanti Devi AIR 1965 All 590 a Full Bench of this Court has held that a cause of action consists of all facts which it is essential for the plaintiff to allege and establish (if denied or controverted) e.g. the bundle of facts which taken with the law applicable to them give to the plaintiff right to some relief against the defendant. It must include some act done by the defendant. In the case of Ram Singhasan Chaubey v Sudama Prasad Shah AIR 1982 Pat. 200 it was held that there is distinction between the amendment which seeks to bring a cause of action which was conspicuously absent and one which though present in the plaint is, however defective. To rectify this defective cause of action amendment can be allowed. The case before Patna High Court was in respect of a suit for specific performance of a contract and in the plaint there was no mention whatsoever of the ingredients of S. 16(c) of the Specific Relief Act. During the course of the hearing of the arguments an amendment was sought to bring on record the allegation that the plaintiffs had always been prepared and were still prepared to perform their part of contract. This amendment was not allowed because it was held that there was no mention of this specific ingredient of S. 16(c) of the Specific Relief Act in the plaint right from the very beginning.

8 In the case of A. K. Gupta and Sons v Damodar Valley Corporation (1966) 1 SCR 796 AIR 1967 SC 96 the Supreme Court made the following observations while dealing with the cause of action —

The expression cause of action in the present context does not mean every fact which it is material to be proved to entitle the plaintiff to succeed as was said in Cooke v Gill (1873) 8 CP 107 in a different context, for if it were so no material fact could ever be amended or added and, of course no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v Unicos Property Corporation Ltd. (1962) 2 All ER 24 and it seems to us to be the only possible view to take. Any other view would make the rule futile.

9 The latest Supreme Court dictum in this respect is contained in the case of Vineet Kumar v Mangal Sain Wadhera, (1984) 3 SCC 352 (1984 All LJ 102) wherein it has been held that normally amendment is not allowed if it changes the cause of action. But it is well recognised that where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, the amendment would be allowed even after the statutory period of limitation. The earlier Supreme Court cases of A. K. Gupta & Sons (AIR 1967 SC 96) (supra) and Robinson (1962 2 All ER 24) (supra) were followed.

10 In the light of this legal position when

we peruse the facts of the present case, it becomes absolutely clear that the plaintiff simply sued for his share in the sale consideration with the allegations that he was entitled to 1/4th share in the property having been owned by his father and that the defendant has usurped the entire sale consideration and refuses to pay the plaintiff's share to him. The cause of action therefore arose by the defendant's receiving the entire sale consideration for and on behalf of all the co-sharers and his refusing to part with the plaintiff's share even after repeated demands. The subject matter of the suit was the amount which the plaintiff claims as due to him on account of all these facts and which he assesses at Rs. 25 000/ The amendment which is sought retains the subject matter of the suit as it is and the cause of action also remains the same It is not necessary that out of the bundle of facts all should remain intact The amendment in some of them is permissible if it is by way of addition of facts to elucidate the matter In the present case the plaintiff simply came with the allegations that the property belongs to his father and hence he has 1/4th share. Subsequently it appears, he was advised that since his mother and three sisters were also alive when the father died, they will also be inheriting equal shares in the property He had sought amendment of this fact and wanted to bring on record the further fact that all the co-sharers had transferred their rights and interest (equal to 7/8th) to the mother and the mother ultimately executed the will in favour of all the four sons excluding daughters and in this manner the plaintiff still remained entitled to 1/4th share This amendment, of course, adds to the facts already enumerated on record. It is not in contradiction with the same. Therefore it cannot be said to completely change the case nasmuch as no new claim is made on a new basis constituted by new facts. This being so the amendment was rightly allowed.

11 The provisions of S 115 of the CPC give to the High Court a discretionary power to interfere with the lower courts orders. In that context the Supreme Court in the case of Major S S Khanna v Brigadier F J Dhillon, (1964) 4 SCR 409 AIR 1964 SC 497 has laid down that exercise of the jurisdiction under S 115 C P C. by the High Court is discretionary and that Court is not bound to interfere merely because the conditions in cls (a) (b) and (c) of that section are satisfied.

12 In the case of Brij Gopal Mathur v Kishan Gopal Mathur AIR 1973 SC 1096 the case of Major S S Khanna (AIR 1964 SC 497) (supra) was considered and followed and the following observation made in that earlier case was reproduced —

The interlocutory character of the order the existence of another remedy to an aggrieved party by way of an appeal from the ultimate order or decree in the proceeding or by a suit, and the general equities of the case being served by the order made are all matters to be taken into account in considering whether the High Court, even in cases where the conditions which attract the jurisdiction exist should exercise its jurisdiction. It follows that while exercising its discretion the High Court can take into consideration such circumstances and facts as may disentitle the petitioner in a revision petition from being granted any relief One of such relevant considerations would be whether the order sought to be revised has occasioned a substantial failure of justice The facts set out in the order of the High Court under appeal were sufficient for coming to the conclusion that it was not a fit case for interference in revision. We are, therefore, unable to accede to the submission of the learned counsel for the appellants that the High Court did not exercise the discretion in accordance with the well settled principles or that the exercise of discretion was such as would justify any interference

13 In the present case there can be no doubt that substantial justice has been done The defendant, vide his written statement, which he has filed so late on the record, admits most of the facts mentioned in the plaint including the amended portions of the plaint. He therefore does not suffer at all by this amendment. It is still open to him to take the plea that the suit is not maintainable, as alleged by his counsel before me because the defendant is the executor of the will of the mother and it is alleged that no suit can be filed by a legatee against an executor The court below would obviously strike an issue on this point, if taken, and record its finding If ultimately it comes to the conclusion that the plaintiff's suit was not maintainable, the

plaintiff would be de-sulted but so far as the amendment is concerned, the impugned order is perfectly justified and the revision is liable to be dismissed.

14 In the result, the revision has no force and is hereby dismissed with costs. The record of the court below shall go back forthwith so that the suit is expeditiously disposed of.

Revision dismissed.

1986 ALL L J 215

= AIR 1986 Supreme Court 319

(From Allahabad)

O CHINNAPPA REDDY E S VENKATARAMIAH, V B ERADI, R B MISRA AND V KHALID JJ

Civil Appeals Nos. 1021 of 1976 3055-57 902 03 2605-06 2921 and 683 of 1981 618 21 of 1982 164-66 of 1982 684 of 1981 3310-11 of 1983 (with SLP (c) No 10105 of 1982) with Civil Appeals Nos. 1402 1411 1577 of 1977 3011 1909-10 2515-18 of 1981 780-85 1268 593 1569-70 1771 1789 2072 2846 3238 of 1982 3265-66 of 1983 718 19 1488 89 2682 of 1985 (with SLP (c) Nos. 4758 of 1982 2241 7212 and 10565 of 1983) D/ 17 10-1985

M/s Adarsh Travels Bus Service and another Appellants v State of U P and others, Respondents.

(A) Motor Vehicles Act (4 of 1939), ss 68C, 68D(3), 68FF and 2 (28A) — Nationalisation of route — Scheme totally prohibiting private operators from plying stage carriages on route — Private operator cannot ply on part of route even with corridor restrictions (1975) 1 SCR 493, Overruled.

Where a route is nationalised under Chap. IVA of the Act, a private operator with a permit to ply a stage carriage permit over another route but which has a common overlapping sector with the nationalised route cannot ply his vehicle over that part of the overlapping common sector even if with corridor restrictions, that is, he does not pick up or drop passengers on the overlapping part of the route (1975) 1 SCR 493 Overruled, AIR 1974 SC 1940 Approved. (1971) 3 SCC 797 Distinguished. (Paras 6 16)

While the provisions of Chapter IV A are devised to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IVA are clear and complete regarding the manner and effect of the take over of the operation of a road transport service by the State Transport Undertaking in relation to any area or route or portion thereof. While on the one hand, the paramount consideration is the public interest, the interest of the existing operators are sufficiently well-taken care of and slight inconvenience to the travelling public as may be inevitable are sought to be reduced to a minimum. (Para 5)

A perusal of S 68C, S 68D(3) and S 68FF in the light of the definition of the expression route in S 2 (28A) appears to make it manifestly clear that once a scheme is published under S 68D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area. The private operator cannot take the plea of inconvenience of the public. If indeed there is any need for protecting the travelling public from inconvenience the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public. (Para 6)

A note of caution may be introduced that when preparing and publishing the scheme under S 68C and approving or modifying the scheme under S 68D care must be taken to protect, as far as possible, the interest of the travelling public who could in the past travel from one point to another without having to change from one service to another on route

This can always be done by appropriate clauses exempting operators already having permits over common sector from the scheme and by incorporating appropriate conditional clauses in the scheme to enable them to ply their vehicles over common sectors without picking up or setting down passengers on the common sectors. If such a course is not feasible the State Legislature may intervene and provide some other alternative methods. But that is entirely a matter for the State Legislature, the State Govt. and the State Transport Undertaking. (Para 13)

In such a case the question really turns on the terms of the Scheme rather than on the provisions of the Statute. In the Scheme in question there is a clause to the following effect No person other than the State Government Undertaking will be permitted to provide road transport services on the routes specified in paragraph 2 or any part thereof. In the face of a provision of this nature in the scheme totally prohibiting private operators from plying stage carriages on a whole or part of the notified routes, it is futile to contend that any of the operators can claim to ply their vehicles on the notified routes or part of the notified routes. (Para 16)

(B) Motor Vehicles Act (4 of 1939), Sec. 2(28A) (as amended in 1969) — Expression route" — Nationalisation of route A B — C, D following somewhere between pts A B — Route A B covers and includes every part of particular highway from A to B — Termini only cannot be looked into — Nationalisation of route C D does affect plying on route A B — Person plying on the common sector is to be held to ply stage carriage permit on the two points even if he does not pick up or set down passengers between those two points.

(Para 7)

Cases Referred	Chronological	Paras
(1975) 1 SCR 493	(1975) 4 SCC 192	1 12 13
AIR 1974 SC 1940	(1975) 1 SCR 615	1 7 13
AIR 1973 SC 534	(1973) 1 SCC 357	11 12 13
(1971) 3 SCC 797	(1970) 2 SCWR 699	1 10
AIR 1966 SC 1661	1962 Supp (1) SCR 717	8 10 12
AIR 1962 SC 1135	1962 Supp (1) SCR 728	4 9 10 12 13
AIR 1961 SC 82		3
AIR 1954 SC 728	(1955) 1 SCR 707	3
AIR 1946 PC 137	1946 AC 338	4 7

CHINNAPPA REDDY, J — These appeals have been placed before us primarily to resolve a conflict between Ram Sanehi Singh v Bihar State Road Transport Corporation, (1971) 3 SCC 797 Mysore State Road Transport Corpn. v Mysore Revenue Appellate Tribunal, (1975) 1 SCR 493 and Mysore State Road Transport Corporation v Mysore Revenue Appellate Tribunal, (1975) 1 SCR 615 (AIR 1974 SC 1940) The question for our consideration is, where a route is nationalised under Chapter IVA of the Motor Vehicles Act, whether a private operator with a permit to ply a stage carriage over another route but which has a common overlapping sector with the nationalised route can ply his vehicle over that part of the overlapping common sector if he does not pick up or drop passengers on the overlapping part of the route? The answer to the question really turns on the terms of the scheme rather than on the provisions of the statute as we shall presently show

2 We will mention here the facts of a few cases which are illustrative of the question raised. In Civil Appeal No 684 of 1981 the appellants hold a stage carriage permit over the route Meerut to Ambala via Bamanheri, Deoband, Gagalheri and Saharanpur One part of the route, namely Meerut to Bamanheri is also part of a nationalised route Meerut Bamanheri- Hardwar while yet another part of the route, namely Gagalheri to Saharanpur is part of another nationalised route Hardwar-Dehradun Gagalheri-Saharanpur The question has arisen whether the petitioners may be allowed to ply their stage carriage over the whole of the route Meerut Bamanheri- Deoband- Gagalheri- Saharanpur-Ambala provided that they observe corridor restrictions that is, provided they do not pick up or set down any passengers between Meerut and Bamanheri and between Gagalheri and Saharanpur In Civil Appeals Nos 1909 and 1910 of 1981 the appellants were applicants for the grant of stage carriage permits over

the route Etah Dhumari-Sidhupur-Patwai. The route Etah - Dhumari - Darvaganj-Qaimganj had already been notified under Chapter IV A of the Motor Vehicles Act. As part of the route over which the appellants applied for permits to ply stage carriages had already been notified under Chapter IV A of the Motor Vehicles Act, their applications for the grant of permits were rejected. They claimed that they should have been granted permits by imposing corridor restrictions over that part of the route which had been notified. In Civil Appeal No 1021 of 1976 the appellant held a permit for plying a stage carriage over the inter-State route Allahabad to Rewa. The permit is said to have been granted in favour of another individual originally under an inter-State agreement between the State of Uttar Pradesh and Madhya Pradesh. On the failure of the original permit holder to obtain a renewal of the permit he lost the permit and it was thereafter granted to the appellant. Part of the route between Allahabad and Chakghat via Panari was nationalised by the Uttar Pradesh Government. The whole of the route Rewa to Allahabad was nationalised by the Madhya Pradesh Government with the concurrence of the Central Government, but with exemptions in favour of the existing operators plying under inter-State agreements, though the matter has not been made very clear to us. The appellant claims that notwithstanding the nationalisation of the route from Allahabad to Chakghat, he is entitled to ply that stage carriage over that part of the route also by observing corridor restrictions. In Civil Appeal No 2921 of 1981 the State of Rajasthan has nationalised part of an inter-State route and the complaint is that the appellant should have been permitted to ply his stage carriage over the entire route with corridor restrictions over the nationalised part of the route. In Civil Appeals Nos. 164-166 of 1982 the complaint is that a very insignificant portion of the route on which the appellants hold stage carriage permits is included in a nationalised route and, therefore, the scheme should have exempted the operation of private stage carriages over the common sector.

3 The right of the members of the public to pass and re-pass over a highway, including the right to use motor vehicles on the public road existed prior to the enactment of the Motor Vehicles Act and was not its creation. The State could control and regulate the right for the purpose of ensuring the safety, peace and good health of the public. As an incident of his right of passage over a highway, a member of the public was entitled to ply his or vehicles for pleasure or pastime or for the purpose of trade and business, subject of course to permissible control and regulation by the State. Saghir Ahmed v State of U P 1955 (1) SCR 707 (AIR 1954 SC 728). Under Article 19(6)(ii) of the Constitution the State can make a law relating to the carrying on by the State or by a Corporation owned or controlled by the State of any particular business, industry or service, whether to the exclusion complete or partial of citizens or otherwise. The law could provide for carrying on a service to the total exclusion of all the citizens, it may exclude some of the citizens only, it may do business in the entire State or a portion of the State, in a specified route or part thereof. The word service has been construed to be wide enough to take in not only the general motor service, but also the species of motor service. There are no limitations on the State's power to make laws conferring monopoly on it in respect of an area, and person or persons to be excluded. Kondala Rao v A P State Road Transport Corpn AIR 1961 SC 82. All this is now well established by the various decisions of this Court.

4 Chapter IV A of the Motor Vehicles Act provides for the nationalisation of road transport services in the manner prescribed therein. No question of the vires of any provision of Chapter IV A on any ground has been raised before us. Chapter IV A of the Motor Vehicles Act was bodily introduced into it by Amending Act No 100 of 1956. It further underwent substantial amendments by Act 56 of 69 (and?) of 1970 which came into effect on March 2 1970. We may mention here S 2(28A) defining route was also introduced by Act 56 of 69. Route was defined as meaning a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. The introduction of S 2(28A) defining the

expression route appears to have been necessitated to dispel the confusion consequent upon the seeming acceptance by this Court in Nikantha Prasad v State of Bihar 1962 Supp (1) SCR 728 (AIR 1962 SC 1135) of the suggested difference between route and highway by the Privy Council in Kelani Valley Motor Transit Co Ltd v Colombo-Ratnapura Omnibus Co Ltd 1946 AC 338 (AIR 1946 PC 137) where it was said A highway is the physical track along which an omnibus runs, whilst a route appears to their Lordships to be an abstract conception of line of travel between one terminus and another and is something distinct from the highway traversed. there may be alternative roads leading from one terminus to another at that does not make the route and highway the same The present definition of route makes it a physical reality instead of an abstract conception and no longer makes it something distinct from the highway traversed

4A Getting back to the highway and Chapter IV A, we first notice S 68A(a) which defines road transport service to mean a service of motor vehicles carrying passengers or goods or both by road for hire or reward Next and this is important S 68B gives overriding effect to the provisions of Chapter IV A and the rules and orders made thereunder over the provisions of Chapter IV and any other law for the time being in force Section 68C provides for the preparation and publication of scheme of road transport service of a State Transport Undertaking Since the answer to the question raised turns primarily on the interpretation of S 68C it is desirable to extract the same It is as follows

68C Where any State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate economical and properly co-ordinated road transport service it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking whether to the exclusion complete or partial of other persons or otherwise the State Transport Undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct

The policy of the legislature is clear from S 68C that the State Transport Undertaking may initiate a scheme for the purpose of providing an efficient, adequate economical and properly co ordinated road transport service to be run and operated by the State Transport Undertaking in relation to any area or route or portion thereof It may do so if it is necessary in the public interest The scheme may be to the exclusion complete or partial, of other persons or otherwise The scheme should give particulars of the nature of the service proposed to be rendered the area or route proposed to be covered and such other particulars as may be prescribed The scheme has to be published in the Official Gazette as well as in any other manner that the State Government may direct The object of publishing this scheme is to invite objections to the scheme Section 68D enables (i) any person already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme (ii) any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government and (iii) any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies to file objections to the scheme before the State Government within 30 days from the date of its publication in the Official Gazette Clause (2) of S 68D empowers the State Government to consider the objections give an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter if they so desire and approve or modify the scheme Clause (3) of S 68D requires the scheme as approved or modified to be published in the Official Gazette whereupon the scheme becomes final and shall thereafter be called an approved scheme There is a proviso to clause 3 which provides that no scheme which relates to any inter State route shall be deemed to be an approved scheme unless it has been published with the previous approval of the Central Government. Section 68E enables the

State Transport Undertaking to cancel or modify any scheme published under S 68D(3) after following the procedure laid down in S 68C and S 68D in respect of certain matters, such as the increase in the number of vehicles or the number of trips change in the type of vehicles without reducing the sitting capacity extension of the route or area without reducing the frequency of the service alteration of the time-table without reducing the frequency of the service The State Transport Undertaking need not follow the procedure laid down in S 68C and S 68D if the previous approval of the State Government is obtained and if the scheme is one relating to any route or area in respect of which the road transport services are to be run and operated by the State Transport Undertaking to the complete exclusion of other persons Section 68B sub-sec (2) enables the State Government at any time if it considers necessary in the public interest so to do to modify a scheme published under S 68D(3) after giving an opportunity of being heard to the State Transport Undertaking and any other person who in the opinion of the State Government is likely to be affected by the proposed modification Section 68F(1) obliges the Regional Transport Authority or the State Transport Authority as the case may be to grant to the State Transport Undertaking the necessary permits on its applying for the same in pursuance of an approved scheme The permits have to be issued notwithstanding anything to the contrary in Chapter IV Section 68F(1A) obliges the State Transport Authority or the Regional Transport Authority as the case may be to issue temporary permits to the State Transport Undertaking for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme The State Transport Authority or the Regional Transport Authority must, however be satisfied that it is necessary in the public interest to increase the number of vehicles operating in such area or route or portion thereof previously Section 68F(1C) enables the State Transport Authority or the Regional Transport Authority as the case may be to grant to private operators temporary permits if no application for a temporary permit is made under sub-sec (1A) in respect of the area or route or portion thereof specified in the scheme Section 68F(1D) prohibits the grant or renewal of a permit, save as otherwise provided in sub-sec (1A) and sub-sec (1C) during the period intervening between the date of publication of any scheme and the date of publication of the approved or modified scheme Sub-sec (2) of Sec 68F enables the State Transport Authority or the Regional Transport Authority as the case may be for the purpose of giving effect to the approved scheme in respect of a notified area or notified route to refuse to entertain any application for the grant or renewal of any permit or reject any such application as may be pending to cancel any existing permit and to modify the terms of any existing permit so as to render the permit ineffective beyond a specified date to reduce the number of vehicles authorised to be used under the permit and to curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route Section 68FF prohibits the grant of any permit except in accordance with a provision of the scheme Once a scheme has been published under S 68D(3) in respect of any notified area or notified route This is an important provision and we may extract it here It is as follows

68 FF Where a scheme has been published under sub-section (3) of S 68D in respect of any notified area or notified route the State Transport Authority or the Regional Transport Authority as the case may be shall not grant any permit except in accordance with the provisions of the scheme

There is however a proviso which enables the grant of a temporary permit to any person in respect of such notified area or notified route if no application for a permit has been made by the State Transport Undertaking Section 68G and S 68H prescribe the principles and method of determining compensation and its payment to the holders of existing permits which are cancelled or modified Section 68I empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Chapter and in particular in accordance with the various matters specified in sub-sec (2)

5 It is thus seen that while the provisions

of Chapter IV A are devised to override the provisions of Chapter IV and are presumably so enacted the provisions of Chapter IV A are clear and complete regarding the manner and effect of the take over or the operation of a road transport service by the State Transport Undertaking in relation to any area or route or portion thereof While on the one hand the paramount consideration is the public interest the interest of the existing operators are sufficiently taken care of and such single inconveniences to the travelling public as may be inevitable are sought to be reduced to a minimum To begin with the State Transport Undertaking must think it necessary in the public interest to provide efficient adequate economical and properly co ordinated State Transport services in relation to any area or route or portion thereof to the exclusion complete or partial of other persons or otherwise This is the initial requirement for the initiation of a scheme Even at that stage the State Transport Undertaking is required to apply its mind to the question of complete or partial exclusion of other persons or otherwise from operating transport services in relation to any area or route or portion thereof There is ample and sufficient guidance to the State Transport Undertaking for the application of mind Thereafter objections to the scheme are to be heard All existing operators providing transport facilities along or near the area or the route proposed to be covered by the scheme are to be heard Therefore it will be open to any operator who is likely to be affected by total or partial exclusion to object to the scheme and suggest such modification as may protect him A hearing is required to be given and the hearing is no empty formality as decisions of this Court have shown Even that is not an end of the matter Even thereafter the State Transport Undertaking as well as the State Government are empowered to cancel or modify the scheme under S 68E. In other words if in the actual working of the approved scheme any difficulty or hardship is experienced by the public or for that matter by other operators such difficulty may be removed and hardship relieved by appropriate action under S 68E Both S 68F and the proviso to S 68FF provide for the issue of temporary permits to private operators if the State Transport Undertaking has not applied for a permit temporary or otherwise in respect of a scheme published or approved We thus find that at every stage abundant provision is made to protect the public interest as also the interest of private operators by providing for consideration and re consideration of any problems that may arise out of a proposed published or approved scheme It is in that context we must construe S 68C and S 68HH both of which provisions have been extracted by us earlier

6 A careful and diligent perusal of S 68C S 68D(3) and S 68FF in the light of the definition of the expression route in S 2(28A) appears to make it manifestly clear that once a scheme is published under S 68D in relation to any area or route or portion thereof whether to the exclusion complete or partial of other persons or otherwise no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area We are not impressed by the various submissions made on behalf of the appellants by their several counsel The foremost argument was that based on the great inconvenience which may be caused to the travelling public if a passenger is not allowed to travel, say straight from A to B on a stage carriage to ply which on the route A to B a person X has a permit, merely because a part of the route from C to D somewhere between the points A and B is part of a notified route The answer to the question is that this is a factor which will necessarily be taken into consideration by the State Transport Undertaking before publishing the scheme under S 68C by the Government under S 68D when considering the objections to the scheme and thereafter either by the State Transport Undertaking or by the Government when the inconveniences experienced by the travelling public are brought to their notice The question is one of weighing in the balance the advantages

conferred on the public by the nationalisation of the route C D against the inconveniences suffered by the public wanting to travel straight from A to B On the other hand it is quite well known that under the guise of the so-called corridor restrictions permits over longer routes which cover shorter notified routes or overlapping parts of notified routes are more often than not misutilised since it is next nigh impossible to keep a proper check at every point of the route It is also well known that often times permits for plying stage carriages from a point a short distance beyond one terminus to a point a short distance beyond another terminus of a notified route have been applied for and granted subject to the so-called corridor restrictions which are but mere ruses or traps to obtain permits and to frustrate the scheme If indeed there is any need for protecting the travelling public from inconvenience as suggested by the learned counsel we have no doubt that the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public

7 One of the submissions urged was that a route according to definition meant a line drawn between two termini and therefore route AB cannot be the same route as CD even if C & D happened to be two points on the highway from A to B It was argued that if route AB was different from route CD the nationalisation of route CD had no effect whatsoever on the permits to ply stage carriages on the route AB This argument is specious and is only to be stated to be rejected In fact whatever argument was open to the learned counsel on the basis of the decision of the Privy Council in Kelam Valley Motor Transit Co Ltd v Colombo Ratnapura Omnibus Co Ltd (AIR 1946 PC 137) (supra) is no longer open to them in view of the definition of route inserted as S 2(28A) of the Motor Vehicles Act by the Amending Act of 1969 We do not have the slightest doubt that route AB covers and includes every part of the particular highway from A to B traversed by the Motor vehicle along that route It is impossible to accept the argument that only the termini have to be looked at and the rest of the highway ignored in order to discover a route for the purposes of the Motor Vehicles Act Equally without substance is the plea that if an operator does not pick up or set down any passenger between the two points of the common sector he cannot be said to be plying a stage carriage between those two points The argument is entirely devoid of substance for the simple reason that the operator does charge the passenger for the distance travelled along the highway between these two points alone Another argument which was advanced and which is also lacking in substance is that a complete exclusion of private operators from the common sector would be violative of Art 14 and that it would be ultra vires S 68D We unable to see how either Art 14 or S 68D of the Motor Vehicles Act hit a scheme which provides for complete exclusion of private operators from the whole or any part of the notified area Almost all these submissions have been considered and met by the majority judgment in Mysore State Road Transport Corpn v Mysore Revenue Appellate Tribunal (1975) 1 SCR 615 (AIR 1974 SC 1940) to which we shall presently refer

8 In C P C Motor Service Mysore v State of Mysore 1962 Supp (1) SCR 717 (AIR 1966 SC 1661) the impugned scheme provided for taking over certain stage carriage services to be complete exclusion of private operators It provided

The State Transport Undertaking will operate services to the complete exclusion of other persons (i) on all the notified inter district routes except in regard to the portions of inter district routes lying outside the limits of Mysore District, and also (ii) over the entire length of each of the inter district route lying within the limits of Mysore District

Certain persons who possessed stage carriage permits to ply vehicles on inter district and inter State routes which overlapped the Mysore District challenged the scheme and contended that their permits should not be affected merely because parts of the routes were within the Mysore District Their contention was that since the termini of the routes on which they were operating vehicles were outside Mysore District it could not properly be said that any portion of their route had been taken over merely because it lay within the Mysore District. It was held by this Court that a route meant not only the

notional line but also the actual road over which the motor vehicles ran and in view of the fact that the scheme reserved all the routes within the Mysore District to the State Transport Undertaking no private operator could be allowed to ply his vehicle on the common sector which was within the Mysore District His route automatically stood pro tanto cut down to only that portion which lay outside the Mysore District

9 Even before the introduction of the definition of route in S 2(28A) by the 1969 amendment, in Nilkanth Prasad v State of Bihar (AIR 1962 SC 1135) (supra) the Court understood the word route on practically the same lines with reference to S 68C and S 68F The Court said

This means that even in those cases where the notified route and the route applied for run over a common sector the curtailment by virtue of the notified scheme would be by excluding that portion of the route or in other words the road common to both The distinction between route as the physical track disappears in the working of Chapter IV A, because you cannot curtail the route without curtailing a portion of the road and the ruling of the Court to which we have referred would also show that even if the route was different, the area at least would be the same The ruling of the Judicial Committee cannot be made applicable to the Motor Vehicles Act, particularly Chapter IV A, where the intention is to exclude private operators completely from running over certain sectors or routes vested in State Transport Undertakings In our opinion therefore the appellants were rightly held to be disentitled to run over those portions of their routes which were notified as part of the scheme Those portions cannot be said to be different routes, but must be regarded as portions of the routes of the private operators from which the private operators stood excluded under S 68F(2)(c)(iii) of the Act

10 In Ram Sanehi Singh v Bihar State Road Transport Corpn (1971 (3) SCC 797) (supra) there was a slight note of discordance The appellant there possessed a permit to ply a stage carriage on a route which had a common sector of five miles of a notified route On the examination of the scheme the Court found that there was nothing in the notified scheme which completely excluded the other holders of permits from plying their stage carriages in pursuance of permits issued to them from terminii not on points on the notified route It was held that merely because the appellant had to run his vehicle on a part of the notified route without the right to pick up passengers or to drop them his permit to the extent of the overlapping portion could be said to be ineffective We are afraid that this decision must be confined to its own facts The learned judges did not notice the earlier decision of the Court in C P C Motor Services, Mysore v State of Mysore (AIR 1966 SC 1661) (supra) and Nilkanth Prasad v State of Bihar (AIR 1962 SC 1135) (supra) They also failed to notice that while S 68C provides for preparation and publication of scheme giving particulars of the services proposed to be run and operated by the State Transport Undertaking in relation to any area or route to the exclusion complete or partial, of other persons or otherwise Section 68FF also debars the State Transport Authority and the Regional Transport Authority from granting any permit except in accordance with the provisions of the Scheme

11 In S Abdul Khader Saheb v Mysore Revenue Appellate Tribunal, Bangalore (1973) 1 SCC 357 (AIR 1973 SC 534) the Court approved the view of the High Court of Karnataka that

when once on a route or a portion of the route there has been total exclusion of operation of stage carriage services by operators other than the State Transport Undertaking by virtue of a clause in an approved scheme the authorities granting permit under Chapter IV of the Motor Vehicles Act should refrain from granting a permit contrary to the scheme

12 In Mysore State Road Transport Corpn v The Mysore Revenue Appellate Tribunal (1975) 1 SCR 493 Beg and Chandrachud, JJ departing from the views generally taken till then took the view that a scheme which totally excluded inter State private operators from using any part of a notified route must make the intention clear There was a difference between area and route Route denoted the abstract conception of line

of travel. A difference in the two termini of two routes would make the two routes different even if there was overlapping Unless the scheme clearly indicated that the use of any portion of the highway covered by the notified route was prohibited inter State operators could not be debarred from plying their vehicles over the overlapping part of the inter State route merely because of the physical fact of the overlapping of the two routes The learned judges did not notice the earlier decisions of the court in C P C Motor Services v Mysore v State of Mysore (AIR 1966 SC 1661) (supra) and Abdul Khader v Mysore Revenue Appellate Tribunal (AIR 1973 SC 534) (supra) Nilkanth Prasad s (AIR 1962 SC 1135) (supra) case was noticed but by passed with the observation whatever may be said about the correctness of the decision etc

13 In Mysore State Road Transport Corpn v Mysore State Transport Appellate Tribunal (1975) 1 SCR 615 (AIR 1974 SC 1940) all the earlier cases were noticed and it was held

It is therefore apparent that where a private transport owner makes an application to operate on a route which overlaps even a portion of the notified route i e where the part of the highway to be used by the private transport owner traverses on a line on the same highway on the notified route then that application has to be considered only in the light of the scheme as notified. If any conditions are placed then those conditions have to be fulfilled and if there is a total prohibition then the application must be rejected.

This Court has consistently taken the view that if there is prohibition to operate on a notified route or routes no licences can be granted to any private operator whose route traversed or overlapped any part or whole of that notified route The intersection of the notified route may not, in our view amount to traversing or overlapping the route because the prohibition imposed applied to a whole or part of the route on the highway on the same line of the route An intersection cannot be said to be traversing the same line as it cuts across it.

The learned judges expressly dissented from the decision of Beg and Chandrachud, JJ in Mysore State Transport Corpn v Mysore Revenue Appellate Tribunal (1975) 1 SCR 493 and approved the decisions of the Court in Nilkanth Prasad s case (supra) and Abdul Khader s case (supra) We agree with the view taken by this Court in Mysore State Road Transport Corpn v Mysore Revenue Appellate Tribunal (1975) 1 SCR 615 (AIR 1974 SC 1940) and dissent from the view taken in Mysore State Road Transport Corpn v Mysore Revenue Appellate Tribunal (1975) 1 SCR 493 We however wish to introduce a note of caution When preparing and publishing the scheme under S 68C and approving or modifying the scheme under S 68D care must be taken to protect as far as possible the interest of the travelling public who could in the past travel from one point to another without having to change from one service to another en route This can always be done by appropriate clauses exempting operators already having permits over common sector from the scheme and by incorporating appropriate conditional clauses in the scheme to enable them to ply their vehicles over common sectors without picking up or setting down passengers on the common sectors If such a course is not feasible the State Legislature may intervene and provide some other alternative as was done by the Uttar Pradesh Legislature by the enactment of the Uttar Pradesh Act No 27 of 76 by S 5 of which the competent authority could authorise the holder of a permit of a stage carriage to ply his stage carriage on a portion of a notified route subject to terms and conditions including payment of licence fee There may be other methods of not inconveniencing through passengers but that is entirely a matter for the State Legislature the State Government and the State Transport Undertaking But we do wish to emphasise that good and sufficient care must be taken to see that the travelling public is not to be needlessly inconvenienced.

14 Shri R K Garg urged that the provisions of Chapter IV and Chapter IV A must be reconciled in such a manner as to allow permit holders to ply their stage carriages notwithstanding that parts of their route are also parts of notified routes We fail to understand the argument having regard to the express legislative pronouncement in S 68B that the provisions of Chapter IV A and the

rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act

15 In one of the cases it was argued before us that though the scheme framed by the Uttar Pradesh Transport Undertaking prohibited the plying of private stage carriages on the not fed part of an inter State route within the State of Uttar Pradesh a later Madhya Pradesh scheme published by the Madhya Pradesh State Transport Undertaking pursuant to an inter State agreement allowed the plying of stage carriages by private operators on that part of the route which was in Uttar Pradesh also The argument was that the later scheme superseded the earlier scheme and therefore the operators could ply their vehicles on the Uttar Pradesh part of the route also We are unable to see how the scheme framed by the Uttar Pradesh State Transport Undertaking can be superseded by the scheme framed by the Madhya Pradesh State Transport Undertaking

16 We are therefore unable to see any merit in any of the Civil Appeals since none of the schemes placed before us contain any saving clause in favour of operators plying or wanting to ply stage carriages on common sectors On the other hand we found that invariably there is a clause to the following effect No person other than the State Government Undertaking will be permitted to provide road transport services on the routes specified in paragraph 2 or any part thereof In the face of a provision of this nature in the scheme totally prohibiting private operator from plying stage carriages on a whole or part of the notified routes it is futile to contend that any of the appellants can claim to ply their vehicles on the notified routes or part of the notified routes. All the Appeals and Special Leave Petitions are therefore dismissed, with costs which we quantify at Rs 2 500/ in each All the interim orders of this Court which enabled the appellants to operate their vehicles on notified routes or part of notified routes or which enabled the appellants to apply for and obtain permits to so operate with or without the so-called corridor restrictions are hereby vacated

Appeals dismissed

1986 ALL L J 224

= AIR 1986 Allahabad 115

K C AGRAWAL AND UMESH CHANDRA JJ

Trijugi Narain Tewari and others, Petitioners v Gorakhpur Kshetriya Gramin Bank and another Respondents

Civil Misc Writ Nos 9449 and 9588 of 1984 D/ 2 9 1985

U P Agricultural Credit Act (19 of 1973), S 11A (as inserted by U P Act 19 of 1975) Loans advanced to agriculturist — Recovery by sending recovery certificate to Collector — Provision as to in S 11A, not violative of Art 14 (Constitution of India, Art 14)

The procedure for recovery of loan by sending recovery certificate to the Collector for recovery as arrears of land Revenues provided by S 11A cannot be said to be violative of Art 14 of the Constitution on ground that it is harsh as compared to provisions for recovery in S 11 and S 10A 10B The object of the Act is to help the agriculturist by giving them financial assistance Experience showed that advances made by the banks were not being returned in time and a number of difficulties were being created It was with the object of avoiding the usual delay in recovering the amount that the machinery of realization of the amount due under the mortgage deed as it were an arrear of land revenue was provided In view of the object sought to be achieved the procedure provided by S 11A cannot be said to be ultra vires Art 14 of the Constitution (Para 21)

S 11A does not suffer from absence of guidelines for its invocation When S 11A is provided with a view to lay down a more speedier method of recovery the same could be resorted to and the provision of providing for speedier remedy is itself a guideline (Para 25)

The absence of a provision for appeal against the issuance of recovery proceedings under S 11A by the principal officer of the Bank does not make the power unreasonable or arbitrary much less renders the provision invalid (Para 34)

Cases Referred	Chronological	Paras
AIR 1985 SC 87		24
AIR 1985 SC 119		23 24
AIR 1985 SC 613	(1985) 2 SCC 732	34 35

AIR 1985 SC 930 1985 All LJ 666 17
AIR 1984 SC 762 1984 Tax LR 2841 24
AIR 1984 SC 1213 1983 Tax LR 2005 20
AIR 1984 SC 1828 16
1984 All LJ 768 (1984) 10 Ali LR 303 30
AIR 1980 SC 821 1980 All LJ 354 13 22
AIR 1979 SC 1303 1979 All LJ 714 16
AIR 1978 SC 597 37
AIR 1978 SC 771 32
AIR 1977 SC 1825 32
AIR 1974 SC 543 24
AIR 1974 SC 2009 16 22
AIR 1965 SC 1017 21
AIR 1965 SC 1103 36
AIR 1963 SC 222 (1963) 2 SCR 353 26 32
AIR 1963 SC 779 36
AIR 1963 SC 1417 22
AIR 1961 SC 828 22 26 32
AIR 1961 SC 1245 36
AIR 1961 SC 1715 22 33
AIR 1954 SC 545 22 33
(1935) 80 Law Ed 291 297 U S 216
Duparquet v Evans 21

Rakesh Dwivedi for Petitioners Standing Counsel for Respondents

K C AGRAWAL, J — This bunch of writ petitions challenges the validity of S 11A of the U P Agricultural Credit Act, 1975 (U P Act No 19 of 1975) hereinafter referred to as the Act which provides for recovery of loans advanced by a Bank to an agriculturist by way of financial assistance Common questions of law are since involved in these cases we propose to take two writ petitions Nos 9545 of 1984 Trijugi Narain Tewari and others v Gorakhpur Kshetriya Gramin Bank and another and No 5588 of 1984 Kashmira Singh v State of U P and others as leading cases It would suffice to mention the facts of only one of them

2 Trijugi Narain Tewari and others took a loan of Rs 40 000/ from Gorakhpur Kshetriya Gramin Bank for purchasing a tractor on May 2 1980 The petitioners were required to deposit the entire amount in six monthly instalments. The payment of the last instalment had to be made by December 1985 Each instalment was of Rs. 4000/ Out of this Rs 13 400/ was paid. Under R 27 of U P Agricultural Credit Rules 1975 (hereinafter referred to as the Rules) a recovery certificate was issued for the recovery of a sum of Rs 50 559 80 paise This certificate was issued in Form F under S 11A of the Act. Before issuing the recovery certificate no other mode of recovery was resorted to

3 Chapter 4 deals with recovery of dues by Banks. The relevant sections of this Chapter which provide for the same are Ss 10A, 10B 11 and 11A The main thrust of the argument of the petitioner was that out of these four sections the procedure of recovering the loan by sending a recovery certificate to the Collector under S 11A was more harsh and in the absence of any guideline as to when should the procedure of recovery under S 11A be resorted to the same is violative of Art 14 of the Constitution

4 Section 10A provides that where a bank has granted any amount of financial assistance to any agriculturist on the charge or mortgage of any land or any interest in such land and later on the bank intends to get the property attached and sold through the civil Court for the recovery of its dues then any law which provides for any restriction on such attachment and sale shall not be effective and would not prevent the bank from applying for sale of the property mortgaged and utilization of the proceeds towards the satisfaction of the bank dues Section 10B empowers the bank to apply to the Tehsildar for the distraint and sale of the movables charged in favour of such bank. Section 11 deals with recovery of loan of a bank through an application to a Prescribed Authority An order which is contemplated to be passed by the Prescribed Authority under sub-sec (1) of S 11 for sale of the mortgaged property is subject to an appeal under sub-sec (2) of S 11 Section 11A can be availed by a Bank for recovering the amount of financial assistance without prejudice to the provisions of Ss. 10B and 11 What the local principal Officer of the bank is required to do for resorting to S 11A is to forward to the Collector a certificate of recovery in the manner prescribed, specifying the amount due from the agriculturist, and on receipt of the certificate the Collector shall proceed to recover the amount specified therein together with expenses of recovery as arrears of land revenue

5 Section 11A was inserted by U P Agricultural Credit (Amendment) Ordinance 1975 which was promulgated on Jan. 25 1975 This Ordinance was replaced by U P Agricultural Credit (Amendment) Act, 1975 (U P Act No 19 of 1975) If we examine the background which led to the passing of the Act, we find that in September 1969 the Reserve Bank of India appointed an Expert Group under the Chairmanship of Sri R. K. Talwar Chairman, State Bank of India, for studying the question of lending by commercial banks to agriculturists The Expert Group suggested certain measures and also drafted

Model Bill. The U. P. Agricultural Credit Act, 1973 was passed on the said Model Bill

The Preamble of this Act recites

An Act to make provisions to facilitate adequate flow of credit for the agricultural production and development through banks and other institutional credit agencies and for matters connected therewith or incidental thereto

6 The Preamble clearly lays down the object for achieving which the Act was passed The aim was to help the agriculturists and to keep the money in circulation For this purpose the procedure relating to recovery of the loans advanced had also been laid down The object of advancing loans was not to give to the agriculturists by way of subsidy but by way of help The agriculturists were required to return the amount to the Bank from which loans were taken so that the amounts did not get blocked up The procedure of recovery had to be made as funds for distribution to agriculturists were limited The commercial banks were required to render financial assistance to agriculturists to enable them to meet their requirements and thereafter to return the same in instalments To secure payment of loans the legislature by this Act amended the U. P. Zamindari Abolition and Land Reforms Act and made provision for creation of charge on land in favour of a bank by declaration

7 In 1975 when the working of the Act was reviewed, the U. P. Agricultural Credit (Amendment) Act 1975 was passed The Statement of Objects and Reasons appended to the said Act states

With a view to securing adequate flow of credit for agricultural production and development through commercial Banks and other institutional credit agencies the Uttar Pradesh Agricultural Credit Act was passed in the year 1973 But the working of the Act revealed certain legal and practical difficulties The problem of rural financing is complex as well as varied. The scheduled banks dealing in agricultural credit made a number of suggestions for the improvement in the provisions of the Act. The Government of India also suggested certain amendments The present Bill for the amendment of the U. P. Agricultural Credit Act, 1973 has accordingly been prepared after consulting the representatives of the banks and after considering other suggestions received by the State Government.

8 The aforesaid statement gives us an idea about the purpose of the Amending Act 19 of 1975 by which amongst others S. 11A was inserted

9 By referring to Ss. 10A and 11 of the Act, the petitioners urged that 'owers would have an opportunity to put forward their cases in support of their assertions In the proceedings under S. 10A they could go to the Court and get their grievances examined by a Judicial Officer who would determine the amount due Section 11 requires the bank to approach to the Prescribed Authority for recovering the amount The Proviso to sub-sec. (1) of S. 11 requires the Prescribed Authority to apply its mind after giving an opportunity to the petitioner Here again, there is an independent application of mind aloof from the bias application of mind by the bank Under sub-sec. (2) the order of the Prescribed Authority is subject to appeal which is provided by S. 12 of the Act On the basis of these provisions the petitioners claimed that they will have opportunity to put forward their cases and to dispute the claim of the bank but no such right has since been given by S. 11A, they would be deprived of putting forward their view points and agitate the question that the amount stated in the recovery certificate is not due Counsel urged that the power conferred by S. 11A is arbitrary in its operation in as much whatever is stated in the recovery certificate to be issued, the Collector will be bound to recover the same and even if the amounts mentioned are incorrect no one would have a chance or opportunity to show to the Collector about the incorrectness of the same

10 Counsel urged that the discrimination which is prohibited by Art. 14 is treatment in a manner prejudicial as compared with another person similarly situated by the adoption of a law substantive or procedural, different from the one applicable to another person

11 We have already analysed Ss. 11 and 11A Under S. 11 proceedings are initiated before the Prescribed Authority in respect of immovable property which is the subject matter of charge and mortgage alone An order of sale of the said property alone can be made by the Prescribed Authority whereas under S. 11A proceedings are commenced before the Collector in respect of any property whether movable or immovable While making the recovery the Collector can adopt one or more of the methods for recovery provided by S. 279 of U. P. Zamindari Abolition and Land Reforms Act Two methods can be simultaneously adopted For availing S. 11A, certificate of

recovery is to be sent in Form P to the Collector. It has to be signed by the Officer in charge of the Bank.

12 Counsel, as observed above, did not only challenge the procedure of recovery under S 14 as more harsh than the one contemplated by S 11 but also urged that there being wide discretion in the bank whom, the bank does by adopting the procedure provided for sale of the mortgaged property under S 11 in one case while in another harsh procedure of recovery provided for by S 14A may be undergone.

13 In Dwarkadas Industries U P v Deep Chand (AIR 1982 SC 801) the validity of Section 3 of U P Public Moneys (Recovery of Dues) Act, 1965 (Act 25 of 1965) providing speedier remedy for recovery of government dues came up for consideration before the Supreme Court. The Supreme Court held that the procedure of speedier remedy was not violative of Art. 14 of the Constitution. In that case U P Financial Corporation took resort to S 3 of U P Act 25 of 1965 for recovering the advances. The challenge to the adoption of speedier remedy was made on the basis of Art. 14 of the Constitution on the ground that the State Government had two remedies available to it in law, one by way of suit for recovery of the mortgaged money and another under the Act which authorised it to recover the amounts due as if they were arrears of land revenue and that the remedy under the Act was more onerous than a suit.

14 The Supreme Court upheld the validity by holding that the State Government was not like ordinary bankers. It used to advance loans in order to assist the people financially in establishing an industry in the State. The amounts were payable in easy instalments and as the amounts invested had to be made available to the public the State Government had to get the same recovered expeditiously. In the instant case also, if we were to apply the ratio of the Supreme Court judgment we will find the position to be exactly the same. For conferring help to agriculturists, the present Act was passed. The amounts are advanced on easy terms with a view to diversify credit to the neglected agricultural sector so that they could boost up the rural economy and production. It is based on the principle of maximum happiness of maximum number of people. Agricultural production cannot be stepped up unless more and more people are provided financial aid by commercial banks and other financial institutions. As the experience showed that advances made by the banks were not being returned in time and a number of difficulties were being created, the provision of S 14A was enacted. As a result of recovery money will remain in circulation and a larger number of people would be helped, otherwise tendency was to take advances on easy terms and not to return the same as a result of which the same used to get blocked up. It was with the object of avoiding the usual delay in recovering the amount that the machinery of realization of the amount due under the mortgage deed as if it were an arrear of land revenue was provided.

15 Dealing with the question that the power of realization by resorting to recovery as arrears of land revenue was capable of being abused the Supreme Court held in the above case in para 7 as under

> It is no doubt true that there is no express provision in the Act containing such guidelines. That, however, in the circumstances of the case is not sufficient to hold that S 3 of the impugned Act confers arbitrary power on the State Government and makes a hostile discrimination. Under S 3 of the Act, the Collector can proceed to realize the amount due as arrears of land revenue only on the basis of a certificate issued by an officer as may be authorised in that behalf by the State Government mentioning the sum due from any person referred to therein. Such officer is expected ordinarily to avail himself of the speedier remedy provided under the statute. We are of the view that the Act which is passed with the object of providing a speedier remedy itself provides sufficient guidance to the officer concerned as to when he should resort to the remedy provided by it. Even normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one to resort to the latter. Administrative officers, no less than the Courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary Civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every

fanciful possibility of discrimination but the real risk of discrimination that we must take into account

16 In State of U P v Bhupat AIR 1984 SC 1828 the provisions of Ss 3 4 5 and 7 of U P Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 were challenged on the ground that the provisions of the Act for recovery of possession and damages by means of summary proceedings were ultra vires Art. 14 of the Constitution inasmuch as the said procedure was arbitrary having not provided any guidelines as to when the same was to be adopted in preference to a civil suit The Supreme Court repelled the argument by referring to its earlier decisions given in Jai Dutt v State of U P AIR 1979 SC 1303 and Maganlal Chhaganlal (P) Ltd v Municipal Board of Greater Bombay AIR 1974 SC 2009 In fact the first decision was that of Maganlal Chhaganlal (supra) In this case what was said by the Supreme Court in para 38 was as under

What is necessary to attract the inhibition of Art 14 is that there must be substantial and qualitative differences between the two procedures so that one is substantially and really more drastic and prejudicial than the other and not more superfine differences which is this imperfect world of fallible human instruments are bound to exist when two procedures are prescribed We should avoid dogmatic and finical approach when handling life's flexible realities

17 In State of U P v Suram Singh, AIR 1985 SC 930 which dealt with the validity of U P Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 (Act No XIII of 1959) the Supreme Court reversed the judgment of the High Court which had held the above Act to be invalid and while doing so the Supreme Court observed

Besides it was found that the procedure under the Act under consideration was not so harsh and onerous as to suggest a discrimination under Art 14

18 In laying down the law to the above effect, the Supreme Court had emphasised that the preamble lays down the purpose behind them, that is the problems belonging to the Corporation and the government should be subjected to speedy procedure in the matter of evicting unauthorised persons occupying them. This was regarded by the Supreme Court as sufficient guidelines for the authorities to take action and indication for the officers to avail themselves of the procedure prescribed by the Act and not resort to dilatory procedure of the ordinary Civil Courts On that ground the Supreme Court held that the provision providing for summary remedy could not be struck down on the possibility of discrimination The Supreme Court observed

It could not be The Act could not be struck down on the possibility of discrimination between occupiers of the Municipal Board and government properties and if it happened, the Court was not powerless

19 We have already referred to the object and purpose of the Amending Act by which S 11A was added. To recapitulate the object was early recovery of moneys given to agriculturists by way of financial assistance This procedure was provided as experience had shown that despite S 11 moneys were being held up Consequently S 11A was inserted which provided for various modes of recovery by the Collector as arrears of land revenue Recovery of dues as arrears of land revenue is a speedier way or method to recover the amount claimable from the persons from whom recoveries are being made A citizen has a right of equal treatment but he in the garb of equal treatment cannot be permitted not to pay the government dues or public money A defaulter has no right to prolong the proceedings of recovery which in fact, appears to be the purpose of the argument advanced for declaring S 11A to be void on the ground of Art 14 of the Constitution

20 In Ram Naram Agrawal v State of U P AIR 1984 SC 1213 the recovery of sales tax dues was started as arrears of land revenue under the provisions of U P Zamindari Abolition and Land Reforms Act and the Rules framed thereunder The Supreme Court elaborately has dealt with the provisions of the Rules and found that recovery of money is done only after service of a notice on the defaulter In that view and taking that fact into account as well as the fact that public moneys have to be recovered expeditiously in public interest, the Supreme Court upheld the validity of S 279(1)(b) and S 281 of U P Zamindari Abolition and Land Reforms Act and Rr 247 247A, 247B and 251 of the Rules It found that these provisions were not violative of Arts 14 19(1)(d) and 21 of the Constitution The Supreme Court emphasised that the authority before whom a recovery certificate is submitted for recovering the amount as arrears of land revenue is expected to use his

discretion in each case in adopting any one or more of the several processes mentioned in S. 279 of U. P. Zamindari Abolition and Land Reforms Act for the purpose of recovering the public dues.

21. From what we have said above we find that to achieve the object and recover public dues earlier the procedure provided by S. 11A cannot be held to be ultra vires Article 14 of the Constitution. It may be noted here that the primary rule of interpretation of any enactment is to interpret it according to the intent of the legislature which enacted it. Of course if the legislature has expressed its intention in clear language no question as to its supposed intention would be permissible. It is settled that the Objects and Reasons of a Bill, particularly when it is an Amending Bill, can be looked into and considered for finding the intention and the meaning of the words used in the amending provision. Because an amending statute gives (comes?) freighted with the meaning imparted to it by the mischief to be remedied (See Duparquet v. Evans (1930) 80 Law Ed 591 (594)). This is why in interpreting a Constitution Amending Act the Statement of Objects and Reasons is admissible to show the mischief which the legislature sought to be remedied by the amendment (See Vajravelu v. Spl. Deputy Collector AIR 1965 SC 1017). This proposition of law is so well settled that we consider it unnecessary to refer to the decisions on the same. We find that if the object of the Amending Act bringing S. 11A is kept into account, no doubt would be left about the speedier recovery of loans which purpose was not to be achieved by S. 11 of the Act. Section 11A was intended to achieve some more than what S. 11 could do.

22. Learned counsel for the petitioners urged that in Maganlal Chhaganlal (P) Ltd v. Municipal Board of Greater Bombay (AIR 1974 SC 2000) (supra) and Director of Industries U. P. v. Deep Chand, (AIR 1980 SC 801) (supra) the questions involved were different and, therefore the said cases are distinguishable. In those cases the validity of an Act providing for eviction from Government premises as well as the validity of an Act providing for recovery of loans as arrears of land revenue was challenged on the ground of Article 14 of the Constitution. The question was that in those cases the authorities have right to proceed under the general remedy of suit as well as the special remedy for summary eviction for recovery of arrears. It was alleged that since there was no guideline prescribed in those cases for the exercise of discretion by the authority under the Act, the provisions were violative of Art. 14 of the Constitution. According to the petitioners' counsel it was in this context that the Supreme Court upheld the validity of the Act in those cases. The ratio was that the government premises as well as the State dues according to the counsel formed special class. For this Special class counsel argued that special remedy could be provided. Relying on Para 15 of the judgment of Maganlal Chhaganlal (supra) counsel argued that in fact the said case supports the petitioners because in the present case the Act provides for a more drastic proceeding in the shape of S. 11A and at the same time a milder procedure in the shape of Ss. 10A, 10B and 11 without there being any guidelines as to the class of cases in which any of the aforesaid fourfold procedures were to be resorted to. For this submission counsel relied on The State of Orissa v. Dhirendra Nath Dass AIR 1961 SC 1715 para 3, Banarsi Das v. Cane Commr. AIR 1963 SC 1417 paras 24, 28 to 31, Suraj Mall Mohta v. A. V. Shastri, AIR 1954 SC 545 and Manna Lal v. Collector of Jhalawar AIR 1961 SC 828.

23. In State of Maharashtra v. Kamal, AIR 1985 SC 119 instances of discriminatory declarations were given. It is true that abuse of power is not to be inferred lightly but experience belies the expectation that discretionary powers are always exercised fairly and objectively. In fact instances of discriminatory declarations made by the competent authority were cited in the High Court to which, according to the High Court, no satisfactory answer was given in the return filed on behalf of the State Government.

24. In this connection counsel also referred to a number of cases of the Supreme Court where the power is absolutely arbitrary irrespective of the fact that the same has been conferred on higher authority. The decisions cited are State of Maharashtra v. Mrs. Kamal Sukumar Durgule AIR 1985 SC 119, State of Punjab v. Khan Chand, AIR 1974 SC 543 paras 4, 8 and 9, Surendra Kumar v. State of Bihar AIR 1985 SC 87.

25. We have considered the above cases but are unable to find anything in them which may help the petitioners in support of their submission that S. 11A is ultra vires Art. 14 of the Constitution. Out of the two Ss. 11 and 11A, if S. 11A was provided with a view to lay down a more speedier method of recovery the same could be resorted to and the provision of providing for speedier remedy is itself a

guidelines as was said in the cases already referred to by us It is needless to mention them again The submission made by the learned counsel was that since S 11 also provided for summary remedy S 11A in the absence of guidelines would be arbitrarily resorted to This loses sight of the fact that experience had shown to the legislature that despite S 11 there were a number of hurdles in recovering the loans and public dues It was for this purpose that the legislature provided in S 11A that the dues could be recovered as arrears of land revenue If S 11 is as good a remedy as S 11A, one fails to understand the insistence of persons like the present petitioners to recover the amount by resorting to S 11 and not by S 11A Section 11A provides for different modes of recovery including as against a guarantor which methods are not available under S 11 If public moneys are not paid within the agreed time the same would get blocked resulting in depriving many others who could be given the financial assistance for achieving the object with which the provision of the U P Agricultural Credit Act 1973 was made The Act intends to benefit the maximum number and that purpose would be completely defeated if recoveries are made impossible by the defaulter by taking resort to adoption of dilatory tactics It appears that litigants think that they have a right to prolong litigations and thus recoveries of moneys taken by them on loans It is this unfortunate aspect of the matter which has prompted the persons like the petitioners to advance argument that S 11A is violative of Art 14 of the Constitution As to the right of a defaulter the Supreme Court in Khazan Chand v State AIR 1984 SC 762 has said as under

A person who does not pay the amount of tax lawfully and admittedly due by him can hardly complain of the measures adopted by the State to compel him to pay such amount It neither lies in the defaulter's mouth to protest against the rate of interest charged to him nor is it open to him to dictate to the State the methods which it should adopt for recovering the amount of tax due from him

26 In Manna Lal v Collector of Jhalawar AIR 1961 SC 828 (para 11) need for recovery of public dues expeditiously was emphasised The Supreme Court held in that case that the amounts could be recovered by the State of Rajasthan after the bank belonging to the princely State of Jhalawar had merged with the State its moneys and assets became that of the State of Rajasthan. To the same effect is the view taken in Lachhman Das v State of Punjab (1963) 2 SCR 353 (AIR 1963 SC 222)

27 Section 11A lays down that where any amount of financial assistance is granted by a bank to an agriculturist and the same is not paid together with interest on the due date then without prejudice to the provisions of Ss 11B and 11 the local principal officer of the bank by whatever name called may forward to the Collector a certificate in the manner prescribed specifying the amount due from the agriculturist The right to issue a certificate has been given to a principal officer who obviously is more responsible than others He would be required to see himself about the correctness of the amount which is being sought to be recovered as arrears of land revenue The certificate officer has to be satisfied firstly that the demand was recoverable and secondly that it is not barred by time It is however not required by the section that the Certificate Officer must record the reasons or the basis of his satisfaction in the matter

28 It was urged by the counsel for the petitioners that the discretion conferred on the principal officer is absolute and is capable of being misused In that connection counsel emphasised for the need of being given an opportunity of hearing We find no merit in this submission The discretion must at last be reposed somewhere The best and in many cases the only security is the wisdom and integrity of public servants The Government cannot administer without committing powers in trust and confidence If we consider and take into account the fact that the amount which is sought to be recovered is on the basis of entries in the books of account of the bank which offers financial assistance and evidence of the same is in the shape of a pass book given to every agriculturist, no confusion would arise on this account The amounts paid from time to time and interest which accrues thereon are entered in the pass books These pass books are always in possession of the agriculturists If an agriculturist has any doubt about the correctness of the pass books and the entries made therein, he has only to contact the bank. Pass Book repeats the entries entered in the ledger That being so no bank is likely to claim the amount arbitrarily and capriciously Sometime it may happen that the amount claimed is more than what it is due in that event such a person can always contact the bank and get his doubt removed Seeing in this background, one would be left to believe that the point of not being given opportunity of hearing by the bank is devoid of substance We know of no authority to pronounce a provision of the Act to be void if it is within general scope of the constitutional

powers of the Legislature only because in the opinion of the Court it was contrary to the principles of natural justice

29 Under the Act financial aid is given by nationalised banks or co-operative societies Co-operative societies while carrying on their activities in various fields do serve a great public purpose of attaining the social and economic welfare of a large section of the people belonging to the general class by encouraging self help and mutual help and by eliminating the middle men do form a distinct group different from other bodies engaged in similar activities on commercial lines Profit element is maintained at a reasonable level. Similar is the position of the nationalised banks The Government of India has major interest in them. It gives directions through the Reserve Bank of India from time to time We therefore find that co-operative societies as well as the nationalised banks form distinct and separate group than others Both of them are engaged in activities other than those by commercial undertakings of other financial institution. over which the Government of India has no control. Consequently recovery of moneys advanced by them could be lawfully made as arrears of land revenue

30 Making of provision for recovery of the dues belonging to the aforesaid bodies as arrears of land revenue is within the legislative competence as was held by this Court in Rais Ahmad v Collector Allahabad (1984) 10 All LR 303 (1984 All LJ 768) This enactment appears to us to be covered by the State List President s assent was obtained to Act No 19 of 1973 on 17 10-1973 Assent to the Amending Act No 19 of 1975 was also received from the President on 31 3-1975 It was published in the gazette the same day

31 An Act can be said to be within the competence of the State Legislature by virtue of entries 30 and 43 of List II and entry 6 of List III The definition of the word Bank as given in S 2(c) is very wide It includes various Scheduled Banks the State Bank and other financial institutions besides co-operative societies and other banks as defined by the Banking Regulation Act, 1949

32 So far as the loan of banking and other institutions falling in the former class is concerned, it will certainly fall within public debt of the State It was so held in Manna Lal v Collector of Jhalawar (AIR 1961 SC 828) (supra) and Lachhman Das v State of Punjab (AIR 1963 SC 222) (supra) In Fateh Chand v State of Maharashtra, AIR 1977 SC 1825 this Entry was widely interpreted in para 54 of the said judgment The same view was adopted in Parthumma v State of Kerala, AIR 1978 SC 771 (paras 57 and 59) in the concurring opinion. The President s assent had to be obtained because of entry 45 of List I, entry 45 (Banking) and entry 46 and also because of entries 6 and 43 of List III

33 It was next argued that in the absence of a provision for appeal against the issuance of recovery proceedings under S 11A by the principal officer of the Bank the said provision has to be held to be ultra vires Art 14 of the Constitution In support of his argument counsel relied on Suraj Mall Mohta & Co v A. V Shastri, (AIR 1954 SC 545) (supra) and State of Orissa v Dhirendra Das (AIR 1961 SC 1715) (supra) In the former case the Supreme Court struck down sub-sec (4) of S 5 of the Taxation on Income (Investigation Commission) Act, 1947 holding it ultra vires in as much as it deprived a person with a valuable right of appeal which was available to him under the Income-tax Act, whereas in the latter case the Supreme Court struck down the Tribunal Rules as it did not provide for a right to appeal as prescribed under the Service Rules

34 We do not find any substance in this argument. We have already held that issuing of recovery certificate in the instant case did not call for any opportunity of hearing to be given to a person as against whom the same is issued For similar reasons and for the fact that mere absence of a corrective machinery by way of appeal or revision by itself would not make the power unreasonable or arbitrary much less would render the provision invalid, we find no merit in this submission In Babu Bhai and Co v State of Gujarat, (1985) 2 SCC 732 (AIR 1985 SC 613) the Supreme Court repelled a similar contention

35 Section 11A ensures application of mind on the part of the principal officer of the bank before issuing a recovery certificate The defaulter from whom recovery is to be made has the evidence of the amount paid by him in his possession In such a case there could be no point in providing for an appeal. Such is the position in all cases where recovery certificates are issued for recovering the dues as arrears of land revenue In support of his contention, counsel relied upon the decisions which have been referred to by us above Those decisions are distinguishable Absence of appellate review in our opinion, in no way militated against the justice and reasonableness of the provisions and, therefore the argument of arbitrariness on this score was untenable The Supreme Court has laid down the tests

which will have to be applied while testing the absence of the provision of appeal on the anvil of Art 14 of the Constitution in Babu Bhai and Co v State of Gujarat (supra) Applying the tests in the instant case we find ourselves unable to hold S 11A to be ultra vires Art 14 of the Constitution on that ground

36 In Jagannath Prasad v State of U P AIR 1961 SC 1245 and State of Orissa v Bidyabhushan, AIR 1963 SC 779 the Supreme Court held that absence of the provision of appeal, where two procedures are provided will not attract Article 14 of the Constitution In Jagannath Prasad s case (supra) two alternative procedures for conducting enquiry against a police officer were available one under Regulation 490 of the Police Regulations and the other under Rr 8 and 9 of the U P Disciplinary Proceedings (Administrative Tribunal) Rules, and no appeal was available under the Tribunal Rules, whereas such appeal was provided under the Police Regulations The Supreme Court held that there was no discrimination In State of Orissa v Bidyabhushan (supra) two sets of rules for conducting enquiry against a non gazetted officer were available one under the Tribunal Rules and the other under R 55 of the C C S (CCA) Rules The Tribunal rules defined misconduct more precisely while C C A rules are somewhat vague The Tribunal Rules do not set out the punishments as in the case of C C A. Rules Provision for appeal was not available under the Tribunal Rules The Supreme Court held that it was not discriminatory In State of Madras v G Sundaram, AIR 1965 SC 1103 the Supreme Court held that where two alternative procedures against a police Inspector one under the Tribunal Rules and the other under the Madras District Police Act were available absence of a provision for appeal was not discriminatory

37 Counsel for the petitioners emphasised following the decision in Maneka Gandhi v Union of India, AIR 1978 SC 597 that the procedure is also required to be fair just and reasonable and not arbitrary or whimsical According to the learned counsel these are components of fairness and as in the instant case recovery will be made of money without fairness the same is invalid We are unable to accept the submission, We have given various reasons for upholding S 11A The proposition of law as advanced by the learned counsel is not disputed To us it appears that the procedure is not unreasonable and arbitrary It is fair just and reasonable Therefore S 11A cannot be struck down on the ground that it does not take care of procedural fairness

38 The last argument of the learned counsel was about the collection charges which he submitted that the State is not empowered to realise We are unable to accept this submission Sub-sec (3) of S 11A provides that the amount due to the Bank shall be paid after deducting the expenses of recovery and satisfying any government dues or other prior charges Rule 29 which has been made under S 11A and Section 25 of the Act, lay down as to how the amount recovered shall be utilised The first preference is about the meeting of expenses of recovery which would be at the rate of ten per cent on the amount of the claim Counsel urged that this fixation at ten per cent is arbitrary We do not find any merit in this submission The maximum fixed is ten percent Fixation of the same was within the rule making power of the State Government Similar adjustment of ten per cent as collection charges is to be found in the U P Zamindari Abolition Rules If a person has defaulted and the government is thrown to the remedy of recovering it as arrears of land revenue one fails to understand as to why should the collection charges be not realised from such a person

39 Sri S N Verma learned counsel appearing for the State Bank of India in one of these cases pointed out to us that repeated notices are issued by the Bank before issuing recovery certificate under S 11A If despite these notices payments of loans are not made and money is spent in collection of the same no exception to recovery of collection charges can be taken

40 In a writ petition this Court cannot go into the merits of the controversy as to whether a person taking loan should have been granted further instalments and recovery should not have been made due to personal and individual difficulties of the defaulters In our opinion the High Court cannot do so Judicial review is no method of enquiring into the wisdom expectancy or reasonableness of administrative acts It is true that administrative decisions cannot be unreasonable or at least not so unreasonable that no reasonable authority could have arrived at that decision This is one facet of perversity But, it is unreasonable to think that because the Court disagrees with the view taken by the Administrative Officer in the matter before it, that must necessarily be thought to be unreasonable

It has been said by Marshall Justice that Judicial power is never exercised for the

purpose of giving effect to the will of the Judge always for the purpose of giving effect to the will of the legislature or in other words to the will of the law. The legislature under the Act provided for the decision of the Certificate Officer to be final. If a bank has decided to recover the amount as arrears of land revenue this Court cannot interfere with the same when nothing illegal is found with the recovery. Whether more instalments should have been given is a question to be decided by the Bank, and not by the Court.

For these reasons the writ petitions fail and are dismissed with costs. The stay orders in both the petitions are discharged.

Petitions dismissed.

1986 ALL. L. J. 233

R. M. SAHAI, J.

M/s Khanna Brothers, Kanpur and others Applicants v. Smt. Sita Devi and others Opposite Parties

Civil Revn. Nos. 315 and 255 of 1981. D/ 7-10-1985 *

U. P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act (13 of 1972) Ss. 20(2)(e) Explanation and 12(1)(b) — Suit for eviction under — Sub-letting prior to commencement of Act with respect to building not covered by old Rent Control Act — Suit liable to be dismissed — Interpretation of statutes — Prospective and retrospective operation of statute — (General Clauses Act (1897) S. 6)

Suit filed under sub-sec. (2) Cl. (e) of S. 20 could not be decreed if it was found that sub-letting was done prior to commencement of the Act and was in respect of a building to which the old Rent Control Act did not apply. (Para 6)

Explanation to S. 20(2)(e) is prospective and could not be held to be retrospective merely because S. 12(1)(b) has been held to be retrospective. (Para 6)

Cases Referred Chronological Paras

1981 UPLT NOC 208 1981 All Rent Cas 602 6

1980 All Rent Cas 220 1980 All W.C. 550 (FB) 6

1977 U.P. PCC 7 1976 All W.C. 80 6

AIR 1976 All 317 1976 All W.C. 1 (FB) 6

---

*Against judgment and decree of Dev Kant Trivedi, 8th Addl. Dist. Judge Kanpur D/ 23-4-1981

D. P. Bahadur and S. N. Varma for Applicants. Rakesh Dwivedi and Dinesh Dwivedi for Opposite Parties.

ORDER — In these two revisions one filed by tenant for setting aside decree for ejectment and arrears of rent and other filed by landlord for enhancing arrears, primary controversy that arose for consideration is if the suit filed under sub-sec. (2) Clause (e) of S. 20 of U. P. Act No. XIII of 1972 could be decreed even if it was found that sub-letting was done prior to commencement of the Act and was in respect of a building to which the old Rent Control Act did not apply.

2. Material allegations on which the suit was filed were that M/s Khanna Brothers a partnership firm was tenant of premises in dispute at Rs. 400/- per month besides water tax, drainage-tax and electricity charges. In Aug. 1978 its partner sub-let premises illegally without obtaining permission of the District Magistrate. And as the premises were constructed in 1967 provisions of Act XIII of 1972 were applicable therefore a notice of demand for arrears of rent since June 1978 and notice for termination of tenancy was served on 8th Sept. 1978. Landlord further claimed water tax at the rate of Rs. 6-1/4 per cent, drainage tax at Rs. 1-1/4 per cent and electricity dues at rate of Rs. 100/- per month with effect from 9th Nov. 1978 to 15th Dec. 1979. In reply it was pleaded that three partners out of six of Khanna Brothers entered into partnership with two others in the name of Plastic Fabrication Industries and it came into existence in Jan. 1978 but closed in June 1977. Allegations of sub-letting were denied. Claim of water tax and drainage tax was also denied. Regarding electricity dues it was claimed that meter was installed and payment was regularly made on consumption recorded in the meter. Plea of res judicata under O. 2 R. 2 C.P.C. was also raised, as a suit filed in 1976 for ejectment and arrears without any pleading of sub-letting was dismissed.

3. Trial Court repelled claim of the res judicata. On sub-letting it was found to have been established that as a result of partnership

agreement premises were sub-let in 1975 without consent of landlord or permission of the District Magistrate In respect of electricity charges trial court held that the claim prior to 9-7-197 was barred by time and after 9th Nov 1975 the charges having been paid in accordance with sub-meter the landlord was not entitled to any decree Decree for drainage and water tax was granted as it was liable to be paid under the Act and tenant could not lead any evidence of its payment

4 Although finding of sub letting was challenged but it is unnecessary to examine it as submission of learned counsel for tenant on the question of law appears to be well founded On fact admitted that building was constructed in 1967 coupled with finding that premises were sub-let in 1975 the question is if the suit could be decreed under S 20(2)(e) of the Act For this it is necessary to extract material part of S 20 It reads as under —

Sec 20(2) A suit for eviction of a tenant from a building after determination of his tenancy may be instituted on one or more of the following grounds namely —

(e) that the tenant has sublet in contravention of Section 25 or as the case may be of the old Act the whole or any part of the building

This clause applies in two situations one after tenant had sub-let in contravention of S 25 or sub-letting was under the old Act of the whole or part of the building As the building was constructed in 1967 old Act which was applicable to constructions till 1952 did not apply What has to be seen therefore is if the sub-letting was in contravention of S 25 of the Act, which reads as under —

Sec 25 Prohibition on subletting — (1) No tenant shall sub-let the whole of the building under his tenancy

(2) The tenant may with the permission in writing of the landlord and of the District Magistrate sub-let a part of the building

Explanation — For the purpose of this section—(i) where the tenant ceases, within the meaning of clause (b) of sub-sec (1) or sub-s (2) of S 12 to occupy the building or any part thereof he shall be deemed to have sub-let that building or part

(ii) lodging a person in a hotel or a lodging houses shall not amount to sub-letting

Sub-s (1) is obviously prospective in nature It prohibits a tenant from sub-letting whole of the building There is nothing either in sub-s (1) or (2) which may indicate that these provisions were to apply to sub-letting which had taken place before However if language or the dominant intention of the Act so demands it can be construed so as to have a retrospective operation As is clear from the section itself it does not expressly attempt to deal with past The Act itself is not retrospective in nature It extends to whole of the State and to every building which had completed ten years from the date its construction was completed S 4 prohibits a landlord or tenant from accepting any premium from tenant or sub-tenant. It obviously operates in praesenti Chapter III of Act is most important Chapter II regulates letting None of the sections apply to past transaction Of course about S 12 there is divergence of opinion which shall be considered later Chapter IV deals with eviction release etc S 20 mentions various grounds for eviction of a tenant, but except second part of the Clause (e) it does not contemplate any situation in which cause of action might have accrued prior to commencement of the Act. Therefore wherever the Act visualised that provisions of this Act may apply retrospectively it has made specific provisions for it The language also indicates that provision is not retrospective The use of present tense is usually indicative of its prospectivity S 25 satisfies this test in full But even then a provision may be held to be retrospective if it was enacted to cure some malady And then of course history becomes important No such intention is gathered from the object nor there is any such intention discernible from any provision of the Act

5 Reliance was placed for the landlord on Explanation to S 25 and it was urged that it left no room for doubt of the section being retrospective Apparently there is nothing in the language which supports such contention Rather use of word ceases is in consonance with settled interpretation that use of present tense indicates that language intended the provision to apply prospectively Moreover an Explanation is appended to a section to elucidate or expound the principal clause The principal clause prohibits sub-letting The explanation widens it by including in it even occupation of premises by a person other

than family member That is even without sub-letting premises may be deemed to have been sub-let if the tenant in order to avoid applicability of provisions of letting etc permits a person other than of his family to occupy it. There is however nothing in this explanation which by itself may indicate that it applies to such occupation before commencement of the Act. No assistance can be derived from expression deemed to have sub-let This deeming is in relation to sub-letting and not to past transaction The conduct of a tenant in permitting a person other than a family member to occupy normally does not amount to sub-letting but it has been created as a fiction by this explanation

6 In Ram Mani Devi v Rent Control & Eviction Officer 1976 All WC 1 (AIR 1976 All 517) a Full Bench of five Judges held that Ss 12 and 25 of Act XIII of 1972 were not retrospective Learned counsel for opposite party urged that the question whether S 25 was retrospective or prospective did not arise in Ram Mani case He relied on Smt. Keshar Bai v District Judge Mathura 1980 All Rent Cas 223 a Full Bench decision where it was held that S 12(1)(b) of the Act was retrospective And as by Explanation to S 25 fiction has been created of deemed vacancy if the building was sub-let it applies to sub-letting which had taken place before the commencement of the Act Reliance was also placed on Shambhu Nath Tandon v IX Addl. Dist Judge Kanpur 1977 (UP) RCC 7 But these were the cases in respect of S 12(1)(b) They did not relate to S 25 In Smt Gulab Devi v VII Addl Dist Judge Kanpur 1981 All Rent Cas 602 (1981 UPLT NOC 208) it was observed

Page 607 para 8

Counsel for respondent No 3 has placed reliance on certain observations made in Smt Keshar Bai case (supra) and on that basis has urged that S 25 too should be treated as retrospective I find it difficult to accept this submission in view of the decisions referred to above on the point one of which is a decision by a Full Bench of five Judges That apart, even if the test laid down in Smt Keshar Bai's case (supra) while holding that S 12(2) of the Act was not retrospective is applied to Explanation (1) to S 25(2) of the Act, there seems to be no scope from the conclusion that the said Explanation cannot be held to be retrospective Two main grounds have been stated in Smt. Keshar Bai's case (supra) for holding that S 12(2) of the Act was not retrospective (1) the use of the word admits in the present tense is S 12(2) of the Act and (2) the legislative history in the sense that under the old Act there was no provision whereby a tenant could be treated to have sub-let an accommodation if he accepted some person as a partner Both these tests are in my opinion applicable in the interpretation of Explanation (1) to S 25(2) also The said Explanation also uses the word ceases in the present tense Likewise under the old Act there was no provision whereby a tenant was to be deemed to have sub-let the accommodation in his tenancy simply because the said accommodation or a part thereof was permitted by the tenant to be occupied by some person who was not a member of the tenant's family If the intention of the Legislature was to make Explanation (1) to S 25(2) of the Act retrospective there was no difficulty in bodily lifting the language of section 12(1)(b) and using the same in Explanation (1) to S 25(2) In place of saying where the tenant ceases within the meaning of clause (b) of sub-section (1) or sub-sec (2) of S 12 it could have very well said where the tenant who is deemed to have ceased to occupy within the meaning of clause (b) of sub-sec (1) or sub-sec (2) of S 12 to occupy the building or any part thereof It is also important to notice that Explanation (1) to S 25(2) places clause (b) of Sub-sec (1) at par with sub-section (2) of Sec 12 which has been held not to be retrospective in Smt Keshar Bai's case supra.

Even accepting the ratio of Smt. Keshar Bai's case it does not help the opposite party as the Explanation has been appended to explain the scope of S 25 By it even ceasure to occupy as defined in S 12(1) (b) has been fictionally deemed to be sub-letting. The fiction cannot be stretched beyond the purpose for which it was incorporated. Objective as stated earlier was to include occupation of building by a person other than family member It does not extend beyond it. By its appendage to S 25 it does not render it retrospective because S 12(1)(b) has been held to be retrospective Since it is only an explanation it shall apply only in those cases where tenant ceases to occupy within meaning of S 12(1)(b) after

enforcement of the Act The interpretation of S 12 1 (b) cannot result in rendering the explanation as retrospective simply because similar or same situation as has been contemplated in that section is deemed to be substituting for purposes of Sec 25 Argument therefore that S 25 is retrospective because S 12 1 (b) has been held to be retrospective cannot be accepted Consequently provision to sub-clause (e) of sub s (2) of S 20 of the Act were not available to opposite party

7 In the result Revision No 315 of 1981 succeeds and is allowed The judgment and decree dated 23rd April 1981 passed by VIII Additional District Judge Kanpur in Small Cause Suit No 60 of 1978 is set aside and the suit is dismissed Revision No 255 of 1981 filed by landlord is dismissed Parties shall bear their own costs

Order accordingly

1986 ALL L J 236

H N SETH AND A N VARMA JJ

Committee of Management of Sri Bala Prasad Kuswaha Inter College Balrampur and others Petitioners v Deputy Director of Education IV Region Allahabad and others Respondents

Civil Misc Writ Petn No 9228 of 1985 D/ 3 10-1985

(A) U P Intermediate Education Act (2 of 1921), S 16-A(7) — Effective control over affairs of Institution — Parties setting up rival claims — Determination of by Dy Director Education — Plea that Registrar of Societies had cancelled registration of society which was set up by petitioners — Order of cancellation could be relied on

S 16-A (7) states that in determining the questions of effective control the Deputy Director Education shall have regard to the control over the funds of the Institution and over the administration the receipt of income from its properties the Scheme of Administration and all other relevant circumstances In the instant case the Deputy Director Education could for the purpose of determining the question of effective control rely on the order of the Registrar cancelling the registration of the Society as set up by petitioners as a relevant fact showing that they were not likely to be in effective control of the affairs of the Institution when a serious dispute having been raised by the parties as regards whether the petitioner s Society was running the Institution (Para 7)

(B) U P Intermediate Education Act (2 of 1921), S 16A (7), Explanation — Power to determine effective control — Deputy Director not to make elaborate inquiry into validity of election

The Deputy Director Education is not required to make any elaborate or detailed inquiry into the validity of the elections set up by the rival groups He has not to act as an Election Tribunal The Deputy Director Education has only to satisfy himself prima facie about the validity of the elections S 16A (7) provides that Deputy Director Education may determine the question about the actual control of the affairs of the Institution by making such inquiry as it may deem fit and proper having regard to the factors mentioned in the Explanation to S 16A (7) Hence in view of the limited scope of S 16 A (7) the Deputy Director Education was not required to pronounce conclusively on the validity of the elections held by one of the rival groups Secondly from the mere fact that the office bearers of the Committee of Management were also elected in the same meeting of the general body held at which the Committee of Management was elected by the general body it does not follow that the office bearers were not elected by the Committee of Management but by the general body 1985 All LJ 471 Rel on (Para 11)

Cases Referred Chronological Paras

1985 All LJ 471 11

S R Singh for Petitioners S D N Singh for Respondents

ORDER — Sri Bala Prasad Kuswaha Intermediate College Balrampur District Allahabad is a recognized Institution governed by the provisions of the Intermediate Education Act 1921 It is run by a Society called Mata Dayal Educational Society Balrampur Barethi Allahabad The management of the college vests in a Committee of Management elected by the

general body of the aforesaid Society Two rival groups-one represented by the petitioner and the other by the respondent No 3 claimed to be in effective control of the management of the Institution By the impugned order dated 21st June 1985 the Deputy Director Education IV Region Allahabad has held that the Committee of Management of which Sri Ram Sumer Singh (the respondent No 3) is the Manager is in actual control of the management and affairs of the institution The order has been passed under S 16-A(7) of the Intermediate Education Act

2 Briefly stated the petitioner's case is that one Sri Avinash Chandra was the President of the Society He had not convened any meeting of the Society for the election of the new Committee of Management for a long time Sri Brij Basi Lal was as a result continuing as the Manager of the Institution since 1967 Consequently Har Prasad and nine other persons alleged to be the members of the Society sent a notice to the President Sri Avinash Chandra on 20th June 1983 for convening a meeting of the Society for electing a Committee of Management which was long over due as well as for electing the office bearers thereof Avinash Chandra however did not convene any meeting Consequently a meeting of the general body of the Society was convened by the aforesaid ten persons on 3rd July 1983 at which a new Committee of Management was elected which in its turn on the same date elected its office bearers with Sri Manik Chandra Singh petitioner No 3 as the President and Sri Tej Bahadur Singh (the petitioner No 2) as the Manager of the Institution The new office bearers found that the registration of the Society which was initially registered in 1947 had lapsed and their predecessors had not cared to have the same renewed Accordingly Sri Tej Bahadur Singh applied for the renewal of registration on 26-9 83 which was rejected on some technical ground Thereafter he applied for fresh registration which was granted on 28 11 83 On 26 12 1983 Sri Tej Bahadur Singh applied to the District Inspector of Schools for attestation of his signatures when he was informed that the District Inspector of Schools had already attested the signature of Sri Ram Sumer Singh on 1 11 1983 treating him as the validly elected Manager of the Institution The petitioners therefore filed objections as a result of which the District Inspector of Schools directed that the salary account of the Institution shall be operated by him singly and by another order dated 15 2 1984 he referred the dispute between the two rival groups to the Deputy Director Education (IV) Region Allahabad

3 The Deputy Director Education purporting to exercise powers under S 16-A (7) which provides that whenever there is a dispute with respect to the management of an Institution persons found by the Deputy Director of Education upon such inquiry as he deems fit to be in actual control of its affairs may for purposes of this Act be recognized to constitute the Committee of Management of such institution until a court of competent jurisdiction directs otherwise invited the two rival committees to give their versions in writing The parties were also invited to file relevant documents and records in support of their respective claims On a consideration of the entire evidence on record the Deputy Director Education held by the impugned order that the Committee of Management which was elected on 28 10-1982 with Sri Ram Sumer Singh as the Manager and Sri Avinash Chandra as the President was in effective control of the affairs of the Institution

4 The case of the contesting respondents is that the Committee of Management which was elected on 28 10 1982 was the only legitimate and validly elected Committee and it is this Committee which has been in effective control of the Management and affairs of the Institution Sri Avinash Chandra never received any requisition alleged to have been sent by Har Prasad and others Indeed the nine other persons who are alleged to have requisitioned the meeting of the general body on 20th June 1983 are not even members of the Society Nor is the Society which Tej Bahadur Singh got registered on 28-11 1983 the real Society which has been running the Institution At any rate the registration which was obtained by Tej Bahadur Singh on 28 11 1983 was cancelled by the Registrar by an order dated 12-4-85 (vide annexure CA 3 to the counter affidavit filed on behalf of the Society by Sri Ram Sumer Singh) Undisputedly Brij Basi Lal was the Manager of the Society until the new Society was elected

on 28 10-1982 and it was the signature of Sri Brij Bas La which had been attested by the District Inspector of Schools all along until the signatures of Ram Sumer Singh were attested by the District Inspector of Schools on 1 11 1983 in consequence of the new elections which were held on 28 10-82 The District Inspector of Schools was thus throughout dealing with the Committee of Management of which Ram Sumer Singh was the Manager till the dispute was referred by him on 15 2 1984 treating that Committee as the validly constituted Committee of Management of the Institution Further the registration of the Society which has been running the Institution from the very beginning was also got renewed by Ram Sumer Singh and a certificate of registration dated 22nd Nov 1982 bearing registration certificate No 248s/82 83 was in operation when the dispute was raised by the petitioners and the Society covered by this registration is the real and original Society which has been running the Institution from its inception The petitioners never came in control effective or otherwise of the Management of the Institution in pursuance of their so-called election alleged to have been held on 3-7 1983

5 For the petitioners Sri N C Upadhyaya contended that the impugned order suffers from a patent illegality in that the Deputy Director Education has failed to record any finding as regards which of the two Committees was in effective control of the Institution It was urged that the basic thing to be examined under S 16-A(7) is as to which of the two rival Committees is in actual control The Deputy Director Education committed an error in pre-occupying himself wholly with the question of the validity of the elections held by the two Committees

6 We are unable to agree In our opinion the Deputy Director Education did address himself to this issue and has given a clear and categorical finding that the Committee of Management represented by Sri Ram Sumer Singh is in effective control After setting out the cases and contentions of the two parties the Deputy Director Education has observed that from an examination of the material brought on the record of the case and upon hearing the two sides it was clear that the Committee of Management of which Sri Ram Sumer Singh was the Manager had been elected by the original Society namely Mata Dayal Educational Society Balrampur Barethi and it is this Committee of Management which was in effective and actual control of the affairs of the Institution until the dispute was referred by the District Inspector of Schools He has further observed that the District Inspector of Schools was dealing with the very Committee at the time of reference of the dispute to the Deputy Director Education The Deputy Director Education has also referred to a letter of Sri Avinash Chandra dated 10 8 1983 addressed to the District Inspector of Schools which indicated that Sri Brij Basi Lal the Manager of the former Committee of Management was continuing to act as the Manager Thereafter admittedly the signatures of Ram Sumer Singh were attested by the District Inspector of Schools on 1 11 1983 He has also observed that the registration of the Society which Tej Bahadur Singh had obtained had been cancelled by the Registrar and that the Society which is alleged to have elected the petitioners Committee of Management on 3 7 83 is different from that which has been running the Institution from the beginning On the other hand the Society which Sri Ram Sumer Singh got registered appeared to be the real Society which has been running the Institution and it is this Society which has been recognized by the Registrar The Deputy Director Consolidation has referred to and relied on the order of the Registrar dated 12-4 85 whereby the registration of the petitioners Society was cancelled and that set up by the respondent was recognized

7 The fact that at the time when the dispute was referred the District Inspector Schools had recognized and was dealing with the Committee of which Sri Ram Sumer Singh was the Manager and that prior to Ram Sumer Singh the District Inspector of Schools was dealing with Sri Brij Basi Lal the predecessor of Ram Sumer Singh as the lawfully elected Manager of the Institution were both relevant and material for arriving at the conclusion that it is the respondents Committee which was in actual control The Deputy Director Education was entitled to rely on these

circumstances In our opinion the further fact that the registration of the very Society which is alleged to have elected the petitioners Committee of Management on 3-7 83 had been cancelled by Registrar and that it was a different Society from the original one was equally material and could be relied on by the Deputy Director Education for the determination of the question as to whether the petitioners were in effective control Explanation to S 16 A(1) states that in determining the questions of effective control the Deputy Director Education shall have regard to the control over the funds of the institution and over the administration the receipt of income from its properties the Scheme of Administration and all other relevant circumstances The Deputy Director Education could therefore for the purpose of determining the question rely on the order of the Registrar cancelling the registration of the Society set up by the petitioners as a relevant fact showing that they are not likely to be in effective control of the affairs of the Institution A serious dispute having been raised by the parties as regards whether the petitioners Society was running the Institution the Deputy Director Education was within his rights in relying on the order of the Registrar cancelling the registration obtained by Tej Bahadur Singh The Deputy Director Education has referred to the aforesaid facts and circumstances and thereafter categorically held that Ram Sumer Singh s Committee is in effective control over the affairs of the Institution

8 We therefore reject the first contention of the learned counsel for the petitioners

9 Before we pass on to the next point we may observe that the conclusion reached by the Deputy Director Education as regards effective control of the Committee of Management seems to be correct Admittedly prior to the attestation of the signature of Ram Sumer Singh the District Inspector of Schools was dealing with Sq Brij Bashi Lal as the Manager of the Institution up to 8th Oct 1983 Soon thereafter the District Inspector of Schools attested the signatures of Ram Sumer Singh and this position continued until the dispute was referred These facts have not been disputed It is not understandable as to when and how the petitioners came in effective control of the Management of the Institution The assertions made on the petitioners in the petition as regards how they got hold of the control of the institution are significantly vague Under the circumstances the Deputy Director Education rightly concluded that at the material time it is the Committee of Management represented by Ram Sumer Singh which was in actual control of the affairs of the Institution

10 Sri N C Upadhyaya learned counsel next submitted that the Deputy Director Education has not considered the material furnished by the petitioners in support of their claims He relied on paragraph 22 of the writ petition in support of this contention This submission is also devoid of any merit Paragraph 22 states ha photostat copie of cash book of 1984 and vouchers and receipts were filed by the petitioners to show effective control over the properties of the Institution Original papers were also produced before the Deputy Director Education These assertions have been denied in paragraph 26 of the counter affidavit of Ram Sumer Singh In the counter affidavit it has been asserted that the petitioners could not produce any document relevant to the controversy The documents produced by the petitioners did not pertain to the relevant period namely the date of the reference of the dispute The genuineness of these documents has also been questioned in the counter affidavit It is alleged that they were forged for the purpose of the case Further the Deputy Director Education has stated in his order that he considered the entire evidence on record and we have no reason to doubt the truth of that statement The Deputy Director Education has preferred to rely on circumstances which were of a clinching character in determining the controversy Those circumstances were established by facts which were not much in dispute The mere omission therefore to refer to every single document placed on the record will not per se vitiate the impugned order Moreover we wanted to have a look at the documents alleged to have been ignored by the Deputy Director Education in order to ascertain whether there has been any failure of justice by the omission of the Deputy Director Education to refer to these documents The petitioners have however not filed copies of those documents In this

view of the matter we are not inclined to interfere with the impugned order merely on the ground that the Deputy Director Education has not specifically referred to these documents

11 Lastly learned counsel for the petitioners submitted that the election of Ram Sumer Singh and others was void ab initio as under the Scheme of Administration of the Institution the office bearers had to be elected by the Committee of Management and not by the general body of the Society We find no merit in this contention either Firstly the Deputy Director Education is not required to make any elaborate or detailed inquiry into the validity of the elections set up by the rival groups He has not to act as an Election Tribunal See 1983 All LJ 471 Maharshi Sukhdeo Vidyalaya Shukaratal v Regional Dy Director Education Isi Region Meerut The Deputy Director Education has only to satisfy himself prima facie about the validity of the elections S 16A(7) makes this absolutely clear It provides that the Deputy Director Education may determine the question about the actual control of the affairs of the Institution by making such inquiry as it may deem fit and proper having regard to the factors mentioned in the Explanation to S 16A(7) In view of the limited scope of S 16A(7) the Deputy Director Education was not required to pronounce conclusively on the validity of the elections held by the respondent on 28 10 1982 Secondly from the mere fact that the office bearers of the Committee of Management were also elected in the same meeting of the general body held on 28 10-1982 at which the Committee of Management was elected by the general body it does not follow that the office bearers were not elected by the Committee of Management but by the general body No such conclusion can be derived from the record of proceedings of the meeting held on 28-10-1982 a true copy whereof is annexure R A 1

12 To sum up our conclusion is that the Deputy Director Education has rightly held that the Committee of Management of which Ram Sumer Singh is the Manager is in effective control of the affairs of the Institution and in reaching this conclusion the Deputy Director Education has not committed any error warranting interference of this Court under Art 226 of the Constitution of India In the result the petition fails and is dismissed with costs

Petition dismissed

1986 ALL. L. J 240

S D AGARWALA J

Bengali Petitioner v District Judge Allahabad and others Respondents

Civil Misc Writ Petn Nos 10600 of 1983 D 24 9 1985

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 33 — Civil P C (5 of 1908), S 11 — Res judicata — Application under S 33(1) of Act on grounds that petitioner was unauthorised occupant of premises in dispute — Finding recorded that petitioner was tenant of premises — Finding operates as res judicata in subsequent suit for declaration and eviction of petitioner

B made an application under S 33(1) of Act on ground that petitioner was unauthorised occupant of premises in dispute which he had inherited The Additional District Magistrate while considering the application as to whether the petitioner had committed an offence punishable under the Act went into question as to whether the petitioner was tenant of premises in dispute After examining voluminous documentary evidence on record he came to a finding that petitioner was tenant of premises in dispute and this decision became final between the parties

Held that the Additional District Magistrate being a competent authority to decide the question the finding recorded by him in proceeding under S 33(1) would operate as res judicata in a subsequent suit for declaration and eviction of petitioner from disputed premises 1978 U P Rent Control Cas 351 Rel on (Para 14)

Once under the provisions of S 33 of the Act the Additional District Magistrate had to go into the question whether a tenancy had been created or not in favour of the petitioner and a finding to that effect was recorded that would operate as res judicata in all subsequent

proceedings The Court of Additional District Magistrate is a Court of exclusive jurisdiction and if any finding was recorded after considering the evidence on record that finding would clearly operate as res judicata.

(Para 18)

On an analysis of the provisions of the U P Act XIII of 1972 it is apparent that t is a complete Code by itself. It provides for appeals. revisions against the orders which the legislature thought fit to be challenged by the persons aggrieved. S 37 of the Act gives finality to the orders passed under the Act and consequently it was specifically provided that no order made in the exercise of any power conferred by or under the Act shall be called in question in any Court. This clearly shows that the Courts exercising jurisdiction under the Act are Courts of exclusive jurisdiction and consequently the general principles of res judicata would be applicable to the case under S 33(1) of Act AIR 1953 SC 33 Followed.

(Para 13)

Cases Referred	Chronological	Paras
1980 All Rent Cas 581		17
1978 U P Rent CC 351	(1978) 1 Ren CJ 620	10 12
AIR 1953 SC 33		9 13

Ajai Kumar Misra for Petitioner S P Srivastava, Standing Counsel, for Respondents

ORDER — This is a petition under Art 226 of the Constitution of India. The facts giving rise to the present petition briefly are as follows —

The property in dispute is premises No 73(new) 51A(old) Meerganj Allahabad Originally the property was under the tenancy of Smt Bauli. After her death it was inherited by Babu Singh, who is respondent No 3 to the petition. It appears that on 21 12 1973 Babu Singh left Allahabad for Delhi. When he came back on 9th June 1976 he made an application to the Superintendent of Police (City) Allahabad stating therein that he is the tenant of the premises in dispute Thereafter he filed an application in the Court of District Magistrate under S 33 of the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 U P Act XIII of 1972 hereinafter referred to as the Act The application was made on the ground that the petitioner Bengali had contravened the provisions of the Act inasmuch as he is an unauthorised occupant of the property in dispute He has come into possession of the property without an allotment order and he should be punished in accordance with the provisions of the Act. This application was registered as case No 13/22/48 of 1979 (Babu Singh v Ratan Kumar and others) The application came up for hearing before the Additional District Judge Allahabad The Additional District Judge Allahabad by an order dated 9-10-1979 held that the property in dispute had been let out by he landlord to Bengali when Babu Singh had gone out of station in 1973 and that the monthly rent of Rs 150/ per mensem is being paid by Bengali regularly thereafter which was supported by rent receipts filed by Bengali. The application moved by Babu Singh was consequently rejected and his request f r evicting Bengali from the premises in dispute on the ground that he was an unauthorised occupant of the premises was not acceded to The order dated 9th October 1979 was challenged by Babu Singh before the Commissioner by way of revision The Commissioner Allahabad Division. Allahabad by an order dated 8th April, 1981 affirmed the decision dated 9th October 1979

2 After the decision by the Commissioner Babu Singh filed suit No 94 of 1982 in the Court of Munsif (West) Allahabad, inter alia, for a declaration that he may be declared as a tenant of the premises in dispute It was also prayed that Bengali, defendant No 8 in the suit if he is found in possession over the house in dispute be evicted and the possession of the premises be delivered back to him. A further prayer was made for recovery of Rs 300/ as a price and damages from Bengali

3 In the suit the trial Court framed the issues The two preliminary issues framed by the trial Court were issues Nos 10 and 11 Issue No 10 which is relevant for the purposes of the present petition was to the effect as to whether the suit is barred by the principles of res judicata

4 The trial Court by order dated 30th May 1983 held that the suit was not barred by the principles of res judicata and accordingly

decided issue No 10 against the petitioner Bengali The petitioner being aggrieved by the order dated 30th May 1983 filed a revision before the District Judge in regard to the decision on issue of res judicata. The District Judge by an order dated 1 8-1973 dismissed the revision in limine and upheld the order of the trial Court While dismissing the revision, only the provisions of S 14 of the Act were considered and the revision was not admitted on an observation being made that no finding was given about the tenancy and as such the suit in question cannot be barred by the principles of res judicata. Aggrieved by the decision dated 1-8 1983 as well as that of the trial Court the present petition has been filed in this Court

5 I have heard the learned counsel for the parties at length

6 Learned counsel for the petitioner has contended that the findings recorded by the authorities under the Act will operate as res judicata in a subsequent suit The argument in effect is that the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 is a self contained Code The decisions given by the authorities under the said Code are final They have exclusive jurisdiction to give the said decision and finality has been attached to those decisions In the circumstances any decision given in proceeding under the Act will have the effect of res judicata in a subsequent proceeding

7 Learned counsel for the respondents however has urged in reply that the proceedings under S 33(i) of the Act relate to the prosecution of a person under the provisions of the Act Only the complaint has to be lodged on the authority given by the District Magistrate No decision in regard to tenancy was necessary to be given and as such any decision given in these proceedings would not affect a suit filed subsequently for declaration of the tenancy rights in respect of the property in dispute He has further urged that no application under S 14 of the Act is maintainable and consequently any observation made treating it to be a proceeding under S 14 of the Act is wholly without jurisdiction and any decision given in a proceeding without jurisdiction cannot possibly operate as res judicata. He has further urged that in any case the finding given by the authorities under the Act was only for the purpose whether prosecution be launched against the petitioner Bengali or not and as such findings given in these proceedings cannot operate as res judicata and the decision given by the Court below does not suffer from any manifest error of law

8 Section 11 of the Code of Civil Procedure lays down that no Court shall try an issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court Admittedly in the instant case S 11 of the Code of Civil Procedure does not in terms apply as the earlier litigation in respect of which the argument of res judicata has been raised was decision given by an authority under the U P Act XIII of 1972

9 The question which I have to consider in the instant case is as to whether the principles of res judicata are applicable to the facts of the present case or not In Smt Raj Lakshmi Dasi v Banamali Sen AIR 1953 SC 33 it has been specifically laid down by the Hon ble Supreme Court as follows --

When a plea of res judicata is founded on general principles of law all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction It does not seem necessary in such cases to further prove that it has jurisdiction to hear the later suit A plea of res judicata on general principles can be successfully taken in respect of judgments of Courts of exclusive jurisdiction like revenue Courts land acquisition Courts administration Courts etc It is obvious that these Courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the Statute

10 In Ram Lal v Vth Additional District Judge 1978 U P Rent Control Cas 351 Hon ble U C Srivastava, J had an occasion to consider as to whether the findings given in a proceeding under the Rent Control Act would operate as res judicata in a subsequent suit It was held

on him as follows :—

The legislation pertaining to the Rent Control matters has also conferred exclusive jurisdiction on rent control Courts and in respect of such matters the provisions of Transfer of Property Act and certain other Acts do not apply. The Courts under the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act are Courts of exclusive jurisdiction and finality has been attached to their decisions. Section 37 of the said Act makes it clear that no order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

11 In view of the above it has been held that the principles of res judicata are also applicable in respect of the findings given under the U. P. Act XIII of 1972 by the Courts under the said Act even though the said Court may not be competent to entertain the subsequent suit.

12 I respectfully agree with the decision given by Hon'ble U. C. Srivastava, J. in the case of Ram Lal (1978 U. P. Rent Control Cas 351) (supra).

13 The U. P. Act XIII of 1972 was promulgated by the legislature with a view to provide in the interest of general public for the regulation of letting and eviction of tenants from certain classes of buildings situated in urban areas and for matters connected therewith. Specific provisions are found in the Act in respect of those properties which come under the purview of the Act as to the manner in which the property will be let out, whom it will be let out and what will be the rent payable in respect of the said building. In fact a statutory tenancy has been created by the Act. The entire letting of the properties as well as payment of rent is governed by the various provisions of the Act. If a person is aggrieved by a decision given by any authority under the Act, specific provisions are made as to where the aggrieved person can go for relief. On an analysis of the Provisions of the U. P. Act XIII of 1972 it is apparent that it is a complete Code by itself. It provides for appeals, revisions against the orders which the legislatures thought fit to be challenged by the persons aggrieved. As already indicated earlier S. 37 of the Act gives finality to the orders passed under the Act and consequently it was specifically provided that no order made in the exercise of any power conferred by or under the Act shall be called in question in any Court. This clearly shows that the courts exercising jurisdiction under the Act are courts of exclusive jurisdiction and consequently the principles laid down by the Hon'ble Supreme Court in Rai Lakshmi Das's case (AIR 1977 SC 331) (supra) fully apply to the decision given by the authorities concerned under the Act. In the circumstances the contention raised by the learned counsel for the petitioner that the general principles of res judicata would be applicable to the cases is well founded.

14 In the instant case, Babu Singh had made an application under S. 33(1) of the Act before the District Magistrate as no prosecution can be launched for an offence under the Act unless it is authorised by the District Magistrate. The District Magistrate while considering the application of Babu Singh as to whether Bengali the petitioner had committed an offence punishable under the Act had gone into the question as to whether he was a tenant of the premises in dispute, whether his tenancy was a valid tenancy and as to whether he contravened the provisions of the Act or not. The decision on this matter as a condition precedent for the decision on an application under S. 33 read with S. 31 of the Act. It was because of the application of Babu Singh that the parties led evidence on the question as to whether Bengali was a tenant of the premises or not. After examining the voluminous documentary evidence on record, the Additional District Magistrate by an order dated 9th October 1979 recorded a finding that after 21st December 1979 when Babu Singh left Allahabad, the landlord had let out the house to Bengali. The landlord admitted Bengali to be his tenant by his affidavit dated 3-10-1977 and that the monthly rent of Rs. 150/- per mensem was being paid regularly since December 1973 by Bengali to the landlord. These findings were based on documentary evidence on record. Babu Singh thereafter challenged these findings before the Commissioner. The Commissioner by his order dated 8-4-1981 affirmed the finding recorded by the Additional District Magistrate. As I have already held above the Additional District Magistrate was an authority competent to decide the question which arose because of an application moved by Babu Singh and

having come to a decision that Bengali was the tenant of the premises in dispute and the landlord accepted the rent from him were decisions which became final between the parties as the order of the Commissioner was not challenged by Babu Singh, thereafter The findings therefore recorded in proceedings under S 33(1) of the Act would clearly operate as res judicata on the principles mentioned above

15 The argument of the learned counsel for the respondent that while authorising filing of complaint the court cannot go into the question of tenancy in my opinion, cannot be accepted. Before the District Magistrate could consider as to whether any offence had been committed by a person he has to find out whether the person against whom prosecution is sought to be launched has actually violated the provisions of the Act as to whether he was a tenant of the premises in dispute and as to whether his occupation was authorised or unauthorised

16 Great emphasis has been placed by the learned counsel for the respondents on the observations made by the learned Additional District Magistrate in his order dated 9th October 1979 that by virtue of the provisions of S 14 of the Act, the possession of Bengali had been regularised S 14 of the Act confers benefit upon those tenants who have come in occupation of the building with the consent of the landlord prior to the commencement of 1976 Amendment Act, the legislature regularised such tenancies and made such tenants regular tenants in the eye of law

17 Specific reliance has been placed by the learned counsel for the respondents on a Division Bench decision of this Court in Zarif Ahmad v Rent Control and Eviction Officer 1980 All Rent Cas 581 The Division Bench of this Court held that the application for regularisation of occupation under S 14 of the Act is not maintainable and as such the prescribed authority had no jurisdiction to entertain such an application and consequently the entire proceedings before the prescribed authority are without jurisdiction In my opinion, the principle laid down in this case does not apply to the facts of the present case at all. In the present case no application has been made under S 14 of the Act The order which has been passed by the Additional District Magistrate is not under S 14 of the Act The order has been passed under S 33(1) of the Act and as such it cannot be said that the order dated 9 10 1979 is without jurisdiction In fact in the present case the Additional District Magistrate has recorded a categorical finding that Bengali was the tenant of the premises in dispute The Additional District Magistrate further only observed that by virtue of the provisions of S 14 of the Act the possession of Bengali would be regularised, that is a benefit which was conferred by law on Bengali No declaration was required in the eye of law In the circumstances, it cannot be said that the order dated 9th October 1979 is without jurisdiction The principle laid down in the case of Zarif Ahmad (supra) does not apply to the facts of the present case

18 Learned counsel for the respondents however has further supported the decision given by the courts below on the ground that whatever finding was recorded by the Additional District Magistrate would save the tenant from prosecution under the Act but that does not debar the civil Court to decide the question of tenancy In my opinion this argument is also fallacious Once under the provisions of S 33 of the Act the Additional District Magistrate had to go into the question whether a tenancy had been created or not in favour of the petitioner Bengali and a finding to that effect was recorded that would operate as res judicata in all subsequent proceedings The Court of Additional District Magistrate as observed earlier is a Court of exclusive jurisdiction and if any finding was recorded after considering the evidence on record that finding would clearly in my opinion operate as res judicata and the orders in question cannot be supported on that basis

19 In the result the petition is allowed, the orders dated 1 8 1983 and 30-5 1983 are hereby quashed The findings recorded by the Additional District Magistrate in his order dated 9th October 1979 to the effect that Bengali is a tenant of the premises in dispute shall operate as res judicata in the present suit A writ of mandamus is issued to the trial Court for decision of the suit in accordance with the observations made above In the circumstances of the case the parties are directed to bear their own costs

Petition allowed

1986 ALL L J 245

S K DHAON AND S I JAFRI JJ

Ramesh Chand and others Appellants v State of U P Respondent

Criminal Appeal No 2894 of 1977 D/ 17 8 1985 *

(A) Evidence Act (1 of 1872), S 3 — Partisan witness — Partisan witnesses though numerically disposed towards accused, their evidence cannot be brushed aside merely on that ground — Their evidence can very well be relied upon for convicting appellants if it is carefully scrutinised (Para 21)

(B) Criminal P C (2 of 1974) S 313 — Statement of accused — Charge of murder — Prosecution failing to establish its case — Accused pleading exception as contained in S 100 of I.P C but failing to discharge burden lying upon him u/s. 105 of Evidence Act — Statement of accused cannot be dissected and incriminating part could not be picked out for conviction of accused by holding out a third case against accused. (Paras 24, 25)

(C) Penal Code (45 of 1860) S 300 — Evidence Act (1 of 1872), S 3 — Murder case — Appreciation of evidence — Prosecution case of accused having opened fire from fire-arms from roof of nearby house — Absence of rifle wounds on person of injured or deceased — No pellets recovered from scene of occurrence — Guilt is not brought home to the accused

Where the prosecution case was that all the accused had opened fire from the roof of the house near the scene of occurrence towards injured and the deceased from a height of 12 to 13 feet from ground level, but there was complete absence of any rifle or revolver injury on person of injured and the deceased and no pellets at the scene of occurrence where the injured and the deceased were sitting were found by the Investigating Officer prosecution having failed to bring home the guilt to the accused beyond doubt, the accused could not be convicted (Paras 22 23 24)

*Against judgment and order of K C Bhargava, 2nd Addl S J Muzaffarnagar D/ 12 12 1977

LC/AD/G882/85/KJK/SNV

Cases Referred Chronological Paras

1963 All LJ 330 1964 (1) Cri LJ 730 23

A. Singhal, P C Chaturvedi P K Tewari, N P Middha, A K Jain and V S Sharma, for Appellants S N Mulla J N Mulla, Deputy Government Advocate and P N Misra, for Respondent

S I JAFRI, J — Ramesh Chand Prakash Chand Naresh Chand and Sita Ram have filed this appeal against their conviction and sentence under Ss 302/34 and 307 34 I P C recorded by Sri K C Bhargava, 2nd Additional Sessions Judge Muzaffarnagar by his judgment and order dated 12th December 1977 They were sentenced to undergo life imprisonment and seven years R I under the aforesaid sections of the Penal Code respectively Together with the appellants Ramesh Chand S/o Bhagwan, Somi, Khemma and Chander were also prosecuted but they were acquitted by the trial Court The State of U P did not file any appeal against their acquittal and therefore we are left to deal with the cases of the present appellants who had preferred the appeal

2 The appellants Prakash Chand, Naresh Chand and Sita Ram are brothers and they are the sons of Sahabial Ramesh Chand appellant is the son of Ram Chander who is the brother of Sahab Lal. In this way, Ramesh Chand, appellant is related to the rest of the appellants being their cousin

3 Ramesh Chand, appellant is said to have been armed with a double barrel gun, Prakash Chand with rifle Naresh Chand with revolver and Sita Ram with Katta (country made pistol) at the time of the occurrence whereas the acquitted accused namely Ramesh son of Bhagwan Somi, Khemma and Chander were alleged to have been armed with Kattas

4 The appellants are the residents of village Alipore Police Station Titavi, District Muzaffarnagar The deceased also belonged to the same village and both the parties are Tyagi by caste and they are neighbours as well It is alleged that Pyara P W 1 Onkar P W 2 Sunhera and Ram Kishan had erected a wall on 12 9 1976 towards the south of their Gher shown by letters A and B in the site-plan Ex Ka 16 prepared by Siya Ram P W 7 the Investigating Officer of this case and while the said wall was being constructed by them,

Prakash Chand and Naresh, appellants arrived there at about [illegible] A M and asked them to refrain from constructing the wall. Upon this Pyara P W 1 told them that they were constructing the wall on their own land. Both the appellants then had threatened Pyara P W 1 and others that if they would not stop from constructing the wall they would be shot by firearms when Sita Ram and Ramesh, appellants would come back to the village

5 The case of the prosecution is that at about 2 or 2 30 P M on 13-9 1976 when Onkar P W 2 Kacheru deceased, and Sunhera were sitting on one roof and Ram Kishore and Pyara P W 1 were occupying another roof in front of the Gher of Vishambhar and were enjoying Hukka, all the appellants along with the acquitted accused climbed upon the roof of Mulhar with their respective firearms in their hands as stated above and out of them Ramesh Tyagi exhorted that the complainant would be given lesson for constructing the wall Thereupon all the accused resorted to firing as a result Pyara and others with the result Onkar P W 2 Ram Kishore Sunhera and Kachheru had sustained gunshot injuries Kachheru fell down inside the gallery of the Gher of Vishambhar on receiving the injuries and succumbed to his injuries instantaneously on the spot The witnesses Pirthi, Dalla P W 3, Dharam Singh and Chaman were attracted to the scene of the occurrence and on their intervention, all the eight accused persons had made good their escape

6 After the occurrence Pyara P W 1 went to the Police Station Titavi and handed over his written report Ex Ka 1 regarding the occurrence to the Head Constable Hari Shanker Sharma who prepared the chik report Ex Ka 6 on the basis of the aforesaid written report at 4 P M the same day He also registered a case in the General diary of the Police Station a copy of the said entry is Ex Ka 7 Sita Ram P W 7 was present at the Police Station at the time of the registration of the case who took up the investigation of the case and left for the place of occurrence and found the dead body of the deceased Kachheru inside the gallery of Vishambhar Conducted the inquest on the dead body of the deceased and despatched the same (sic) in sealed cover along with other connected documents to the Chief Medical Officer Muzaffarnagar for post mortem examination through constable Abdul Salam He also recorded the statement of Pyara P W 1 and other witnesses the same day On 14-9 1976 he recorded the statement of Dalla P W 3 and some other witnesses Some blood and two (sic) hies were recovered by the Investigating Officer near the dead body of the deceased inside the gallery of Vishambhar He also found pellets and tickhes near the house of Nashi Ram on the patanway and prepared recovery memo Ex Ka 13 He also found two live cartridges of 315 bore from the roof of Mulhar and took the same into his possession The two cartridges are Exs 9 and 10

7 Dr M P Agarwal P W 9 examined the injuries of Onkar Singh on 13 9-1976 at 10 15 P M and found the following injuries on his person

' Multiple gunshot wounds of entry of size 1 cm × 1 cm dispersed on the enteron at surface of left upper arm Advised X ray

8 The Doctor opined that the injury was caused by firearm

9 Dr M P Agarwal also medically examined the injuries of Ram Kishore injured at 10 10 P M on 13-9 1976 and found the following injuries on his person

Subconjunctival haemorrhage of left eye No exit wound or laceration could be detected For better examination he is referred to ophthalmic surgeon Advised X ray for orbit. The same doctor also examined the injuries of injured Sunhera at 10 20 P M on 13-9 1976 and found the following injuries on his person

1 Three 1 m.m × 1 m.m sized gunshot wounds of entry on right chest on following area with surgical emphysema 4 × 3" and ½ above 2nd joint of clavicle and ¼' below medial part of right clavicle

2 Two gunshot wounds of entry 1 m m × 1 m m. specified on the antero-medial surface of right upper arm

3 One gunshot wound of entry 1 m m. × 1 m.m specified on nose

4 One gunshot wound of entry 1 m.m. × 1 m m. on the upper and ante-costal part left upper arm specified The doctor opined that the injuries were caused by firearm object.

Dr N D Bahuguna P W 8 conducted

autopsy on the dead body of Kachberu at 4 P M on 14-9 1976 and found the following ante-mortem injuries on his person

1 Two abrasions each 1/8' × 1/8' — 1' apart on upper part chest wall right side

2 Two gunshot wounds, each 1/8" × 1/8" × deep into chest cavity (close to each other) just below the right nipple (Surgical emphysema present on right side chest front aspect) No blackening or tattooing present.

3 Seven abrasions each 1/8" × 1/8' on front of chest wall middle lower part

4 Abrasion 1/8 × 1/8 on upper part sternum middle

5 Two Abrasions each 1/8 × 1/8 on — 1/2 apart on upper part chest wall right side

6 Two gunshot wounds each 1/8' × 1/8 × deep into chest cavity 2' below right nipple at 7 O clock position going in thigh 4th and 5th inter costal space No blackening or tattooing

7 Two gunshot wounds each 1/8 × 1/8' × chest cavity deep near each other — close to left nipple at 1 O clock position — no blackening tattooing

8 Abrasion 1/4 × 1/5' left side abdominal wall middle

9 Abrasion 1/8' × 1/8 on left side abdominal wall lower part

10 Two gunshot wounds each 1/8" × 1/8" × muscle deep in front of upper part left thigh no blackening tattooing present.

11 Six abrasions each 1/8 × 1/8" × muscle deep on outer part in an area of 6" × 4

12 Gunshot wound 1/8" × 1/8" × muscle deep on outer part left wrist no blackening or tattooing

13 Abrasion 1" × 1/4" on back of lower 3rd left forearm

14 Three gunshot wounds each 1/8' × 1/8' × muscle near each other on back of lower part left forearm no blackening or tattooing

15 Bruise with abrasion 1 1/2' × 1/5" back of middle right forearm.

16 Abrasion 1/8' × 1/8" on back of lower part right forearm.

17 Bruise with abrasion 1 1/2" × 1/2" on back of lower part right arm

18 Abrasion 1/4' × 1/4' on back of dorsum of right hand middle

19 Abrasion 1/8" × 1/8' on back of dorsum of left hand middle part.

The Doctor attributed the cause of death to shock and haemorrhage on account of gunshot injuries Doctor N C Sharma P W 1 examined the injuries of Prakash, appellant on 9 05 A.M. on 18 9-1976 in the District Jail Muzaffarnagar He had found the following injuries on his person

1 Incised wound 1' × 1/5" × muscle deep on the right side of the chest 4 1/4" above the right nipple at 11 O clock position oblique

2 Scabbed abrasion 1/7' × 1/10' on the left side abdomen 3 away from umbilicus at 4 O clock position

3 Scabbed abrasion 1/4' × 1/4' on the inner border of right scapula.

4 Contusion 1 1/2' × 3/4 on the inner side of right thigh 1 above the knee

5 Lacerated wound 1/2" × 1/4' × bone deep on the front of right leg 3 1/5 — above the ankle

10 According to the opinion of the Doctor the injuries were simple and they were about 5 days old

11 After concluding the investigation, Sita Ram P W 7 submitted charge sheet Ex Ka 17 against all the eight accused persons

12 Out of the appellants, Ramesh Chand stated in his statement under S 313 Cr P C that Sunhera, Kacheru and Onkar P W 2 were constructing a wall in front of his door which opens on the northern side towards the Kharanja. His brother Prakash asked these persons to stop the construction but they continued to construct the wall whereupon Prakash started demolishing the said wall and while doing so Prakash was assaulted by them by means of spear and lathis. Prakash fell down on the ground on receiving the injuries and in his bid to save Prakash, he had opened fire from his gun as a result of which Sunhera, Kacheru and Ram Kishore had sustained the injuries A similar statement was given by Prakash, appellant in his statement also under S 313 Cr P C

13 Sita Ram, appellant stated that on the

day of occurrence he was not present in the village as he had gone to audit the L P Co-operative Land Development Bank at Sardhana, District Meerut. All the remaining accused denied their presence in the occurrence

14 The appellants examined Dr N C Sharma D W 1 Amrit Kumar D W 2 Hari Shanker D W 3 Jagdish Prasad Agarwal D W 4 and Shiv Raj Singh D W 5 in their defence The trial Court also examined Sri S C Garg C W 1 and Trilok Chand C W 2

15 The prosecution examined in all 10 witnesses in support of its case and out of them Pyara P W 1 Onkar P W 2 and Dalla P W 3 were examined as eye-witnesses of the occurrence

16 The trial Court did not rely on the testimony of Dalla. P W 3 and held that he was not present at the time of occurrence as he had reached there at a later stage We have very cautiously and carefully gone through the evidence of Dalla P W 3 and we are in complete agreement with the reasons given by the trial Court in not placing reliance on his testimony We are now left with the evidence of complainant Pyara, P W 1 and his nephew Onkar Singh, P W 2 in support of the prosecution case

17 Pyara. P W 1 deposed in his evidence before the trial Court that he Kacheru deceased, Onkar P W 2 Sunhera and Ram Kishore were sitting on two cots in front of the Gher of Bishambar in the Gali at about 2 or 2 30 P M. and were enjoying Hukka at the time of occurrence when all the aforesaid eight accused persons armed with their respective weapons as stated above came at the roof of Mulhar and out of them Ramesh, appellant cried out loudly that they would teach them lesson for constructing the wall and started firing towards us, with the result that Onkar P W 2 Ram Kishore Kacheru and Sunhera had received gun shot injuries Kacheru fell down in the gallery of Vishambhar and succumbed to his injuries instantaneously on the spot. He stated that after the occurrence he went to the police station and there he had lodged his report of the occurrence He further stated that one day prior to the occurrence while they were constructing a wall on the southern side of their Gher on their land, Prakash and Naresh, appellants arrived there at about 8 A. M. and restrained them from constructing the said wall but on their refusal to stop construction of the said wall, appellants Prakash and Naresh had thereatened them and said that if they will not desist from constructing the wall, they would be gunned down after the return of Sita Ram and Ramesh, appellants in the village He admitted in his cross examination that all the 8 accused persons had fired with their arms towards them from the roof of Mulher It is also an admitted case of the prosecution that the roof of Mulhar stood at a height of 13 to 14 feet from the ground level where Pyara, P W 1 and others were sitting on two cots He also admitted that a she buffaloe had also been hit by gunshots during the occurrence but he did not mention this fact in his report. He further admitted that the she-buffaloe was tied to a Khoonta (peg) fixed in the eastern wall of the house of Sunhera on the Kharanja on the southern side P W 7 Sia Ram the Investigating Officer had also admitted in his evidence that when he arrived at the place of occurrence he had found the she-buffaloe tied to a Khoonta on the eastern side of Kharanja on the north western corner of the house of Mulhar He further stated that the she-buffaloe was tied to some hook which was fixed on the wall of the house of Mulhar He also deposed that the aforesaid she-buffaloe had sustained pellet injuries It has also been admitted by Pyara in his cross examination that the houses of Shambhu Kashi Ram and Raja Ram are situated on the northern side of the place of occurrence at some distance He stated that there was an impact of firing on the wall of Kashi Ram at a distance of 13 to 14 feet from the level of the ground In cross examination, he denied the suggestion that they were constructing the wall in front of the northern door of the appellant Ramesh on the day of occurrence and when Prakash appellant started to demolish th said wall, they fell upon him giving beating by means of Lathi and spear and it was in a bid to save the life of Prakash that Ramesh had opened fire from his licensed gun causing injuries to the injured and deceased He also denied the injuries on the persons of Prakash, appellant

18 Onkar P W 2 is injured. He is the nephew of Pyara complainant He had corroborated the statement of Pyara, P W 1

to the effect that at the time of occurrence he along with Pyare Kacheru Ram Kishore and Sunhera were sitting on the Kharanja in front of the house of Vishambhar on two cots. and they were enjoying Hukka at that time when all the eight accused persons armed with their respective weapons reached the top of the roof of Mulhar and Ramesh appellant after hurling abuses cried out loudly that they would be given lesson for constructing the wall and saying this all the accused had started firing towards us with the result. he Sunhera, Ram Kishore and Kacheru had sustained injuries He further stated that Kacheru after receiving the injuries. fell down to the ground in the gallery of Vishambhar and breathed his last instantaneously on the spot. He also stated that his injuries were examined by the Doctor He also deposed that at the time of occurrence on receiving injuries blood had oozed out from their wounds but it did not fall on the ground He also denied the suggestion that they had constructed a wall in front of the northern door of appellant Ramesh and on the remonstrations made by Prakash appellant, he was assaulted with lathis and spears by them and by way of saving the life of Prakash. appellant Ramesh had opened fire from his licensed gun towards them, with the result that he Ram Kishore Sunhera and Kacheru had sustained injuries

19 The defence examined Dr N C Sharma to prove the injuries on the person of Prakash appellant. The aforesaid doctor stated that he had examined the injuries of Prakash at 9 05 A.M on 18 9 1976 in the District Jail itself and according to him, injury No 1 on the person of the appellant was caused by sharp-edged weapon like Ballam and the rest of the injuries with lathis He also stated that it is probable that injuries were caused to the injured Prakash on 13-9 1976 Dr Sharma was cross examined by the prosecution but no suggestion was put to the doctor that the incised wound on the chest of Prakash appellant could be fabricated or self inflicted.

20 Sita Ram appellant pleaded alibi He examined Hari Shanker D W 3 and J P Agarwal D W 4 in his defence Hari Shanker who is Senior Assistant Audit Officer stated that on the day of occurrence Sita Ram accused was auditing accounts at Sardhana, District Meerut, and he had given the Tour programme which he had proved. J P Agarwal D W 4 stated that on 31 9-1976 he was cashier in Land Development Co-operative Bank Sardhana and on that day Sita Ram accused had audited the Bank from 10 A.M. to 5 P M and he had checked the opening balance in the cash book and he had also signed on it in his presence Here it is pertinent to note that Sardhana lies at a distance of 37 miles from the place of occurrence and. therefore much importance cannot be given to the evidence of alibi in view of the fact that a man can conveniently cover a distance of 37 miles by means of road transport within two hours and, therefore the alibi of Sita Ram accused is of no help to him

21 It cannot be disputed that both the witnesses Pyara and Onkar Singh are highly partisan and they are also inimically disposed towards the accused but their evidence cannot be brushed aside merely on that score Their evidence can very well be relied upon for convicting the appellants if it passes through the crucial testing on the touchstone of reliability The only requirement of law is that the evidence of interested witnesses has to be carefully scrutinised in order to place reliance on the testimony

22 Sri C S Saran, learned counsel for the appellants urged that the story set up by the prosecution that all the eight accused who were armed with double barrel guns rifle revolver and Kattas (country made pistols) has fired towards the witnesses who were sitting on the ground on two cots from the roof of Mulhar is completely demolished by the medical evidence adduced in this case The learned counsel submitted that the three injuries of Sunhera and the single injury of Onkar P W 2 are of the size of 1 mm. × 1 mm and from the seat of the injuries, it appears that they are the outcome of a single shot by a 12 bore cartridge The learned counsel further submitted that the gun shot injuries of the deceased also appear to be the result of one gunshot injury caused by 12 bore cartridge of LG make All these injuries are on the front portion of the deceased. The learned counsel for the appellants further stated that no firearm injury was found on the person of Ram Kishore alleged to have been injured by gun-shot on medical examination. It is significant to note that there is complete absence of any rifle or

evidence of injury on the person of the injured and the deceased We are therefore in complete agreement with the submission made by the learned counsel for the appellants that the statements of the prosecution witnesses that all the 8 accused had opened fire towards them with their respective weapons are tainted with falsehood and cannot be believed by any stretch of imagination. Moreover it was also pointed out by the learned counsel for the appellants that in view of the opinion of Dr Bahuguna P W 8 that it was probable that the injured and the deceased had sustained injuries by fire arms when the assailants had fired from the same level towards the deceased and the injured The prosecution case that the firing was done by the accused from the roof of Mulhar from a height of 12 to 13 feet from the ground level towards the injured and the deceased who were sitting on the ground on the Kharanja in front of the house of Vishambhar cannot be believed at its face value Moreover it may also be noted that according to the statement of the investigating officer the she-buffaloe which was tied near the door of Mulhar to a hook (Khoonta) on the ground, had also sustained gun shot injuries. The she-buffaloe could not have sustained gun shot injuries, if the firing had taken place from the roof of Mulhar towards the northern side on the ground at a distance of 19 yards where the injured and the deceased were sitting on the cots Furthermore it was also pointed out that the impact of bullet found at a height of 14 feet on the wall of Kashi Ram at a distance of 33 yards from the roof of Mulhar is also not probable if the firing was done from the roof of Mulhar It was also pointed out that the story that at the time of firing the injured and the deceased were puffing Hukka is also not supported by the recovery of Hukka on the spot. According to the Sub-Inspector he did not find any Hukka on the spot It is further significant to note that the Investigating Officer did not find any blood on the place where the deceased and injured were sitting on the cots. He no doubt, found some blood and two tickles in the gallery of Bishambhar near the dead body of the deceased Khachera. It is therefore highly doubtful that the Tikhes could have travelled to a distance of 19 yards inside the gallery of Bishambhar if the firing had taken place from the roof of Mulhar The learned counsel for the appellants had rightly contended that the statement of the two witnesses viz Pyara and Onkar Singh that they had identified the respective weapons in the hands of eight accused persons from a distance of 19 yards while the accused were at the roof of Mulhar is not believable It is noteworthy that no pellets or tikhes were found at the scene of occurrence by the Investigating Officer where the injured and the deceased were sitting on the two cots at the time of occurrence Even the cots were recovered by the Investigating Officer on the spot

23 We are therefore of the view that the story set up by the prosecution that all the eight accused persons had fired from their respective weapons towards the witnesses and the deceased, is not worthy of reliance We further hold that the prosecution evidence that the firing was done by the appellants from the roof top of Mulhar is also not believable

24 Ramesh appellant stated in his statement under S 313 Cr P C that he had caused injuries to the injured and the deceased by firing from his licenced gun in order to save the life of his brother Prakash who was being assaulted by the injured and the deceased by means of lathi and spear when the injured and the deceased were constructing the wall in front of the northern door of his house Dr N C Sharma has examined the injuries of Prakash on 18 9 1976 and he had found the injuries on his person and according to him, the injuries on the person of Prakash appellant, might be caused on 13 9 1976 Here it is important to note that there is nothing on the record which may establish that any wall was being constructed by the injured and the deceased in front of the northern door of Ramesh appellant and when Prakash objected to the constructions of the wall, the witnesses and the deceased had assaulted him with lathi and spears with the result that Ramesh Chand had exercised his right of private defence in causing injuries to the injured and the deceased It may further be noted that the appellant Ramesh or Prakash did not lodge any report giving their own version of the occurrence at the Police Station They did not even send any complaint to the concerned authorities Moreover there is no evidence that Prakash had got his injuries examined before 18 9 1976 Under the circumstances as

said above we are unable to hold that Ramesh appellant had exercised his right of private defence in causing injuries to the injured and the deceased in order to save his brother Prakash Chand.

25 It is no doubt true that Ramesh appellant stated in his statement under S 313 Cr P C that in order to save his brother Prakash Chand he had caused injuries to the deceased and the injured but he had failed to discharge the burden lying on him u s 105 of the Evidence Act while pleading the except on as contained in Sect on 100 I P C under the circumstance it is to be considered whether the admission of the accused Ramesh can be taken in its entirety or it is open to the Court to dissect the statement and to pick out a part of the statement which is incriminative or convicting the accused The learned counsel for the appellants has referred to 1963 All LJ 1360 Narain Singh State of Punjab where it was said as under

The Courts below were of the view that the prosecution evidence as it stood was insufficient to bring home the charge against Narain Singh and his nephews The case for the prosecution that Narain Singh was armed with stick and joined in the assault upon Bachan Singh was sought to be established by affirmative evidence The case failed because the evidence in support of the case was unreliable Narain Singh admitted that he had caused injuries to Bachan Singh with a Kirpan carried by him but he explained that he caused the injuries when he was thrown down and Bachan Singh was attempting to strangulate him There can be no doubt that if a person reasonably apprehends that his assailant is attempting to strangulate him exercise of the right of defence of person extends even to causing death of the assailant Narain Singh pleaded that he had fallen down and Bachan Singh attempted to strangulate him and therefore he caused injuries to Bachan Singh in exercise of the right of self defence This plea had to be considered as a composite plea it was not open to the court to investigate whether Narain Singh could have reasonably apprehended such injury to himself as justified him in causing the death of Bachan Singh Where a person accused of committing an offence sets up at his trial a plea that he is protected by one of the exceptions general or special in the Indian Penal Code or any other law defining the offence the burden of proving the Exception undoubtedly lies upon him. But this burden is only undertaken by the accused if the prosecution case establishes that in the absence of such a plea he would be guilty of the offence charged. The prosecution case however did not by reliable evidence establish affirmatively that Narain Singh had done any act which rendered him liable for the offence of murder His responsibility if any arose only out of the plea raised by him if the plea amounted to a confession of guilt the Court could convict him relying upon that plea but if it amounted to admission of facts and raised a plea of justification the Court could not proceed to deal with the case as if the admission of facts which were not part of the prosecution case was true and the evidence did not warrant the plea of justification

26 We therefore hold that it is not open to us to dissect the statement of Ramesh appellant from his statement recorded u/s. 313 Cr P C and pick out a part of his statement which is incriminating for the conviction of the appellant. We have already held that the prosecution has failed to establish its case and the story set up by it is tainted with falsehood Under the circumstances it is not open to us to hold a third case and convict the appellant Ramesh relying upon the incriminating part of his statement recorded under S 313

27 Having considered all the facts and circumstances of the case we come to the irresistible conclusion that the prosecution has failed to bring home the guilt to the appellants beyond a shadow of doubt, and therefore the order of conviction and sentences recorded by the trial Court cannot be sustained.

In the result, the appeal is allowed The conviction and sentences recorded by the trial Court are set aside The appellants are on bail. They need not surrender Their bail bonds shall stand automatically cancelled

Appeal allowed.

1986 ALL L J 252

= AIR 1986 Supreme Court 386

(From Allahabad)*

V D TULZAPURKAR AND R S PATHAK, JJ

Civil Appeal No 1338 of 1973 D/ 19 11 1985

Commissioner of Sales Tax, U P Appellant

Macneill & Barry Ltd Kanpur Respondent.

U P Sales Tax Act (15 of 1948), S 3 — Notification No ST 3124/X 1012(4) 1965 dtd. 1 7 1966 — "Paper other than hand made paper" — Ammonia paper and ferro paper do not fall within the entry "Paper other than hand made paper in the notification — Liable to be taxed as unclassified goods AIR 1979 SC 180 Distinguished. (Para 7)

Cases Referred	Chronological Paras
AIR 1979 SC 180 (1979) 2 SCR 138 1978 Cri LJ 1859	6
AIR 1977 SC 132 39 STC 8 1977 Tax LR 1601	6
1974 Tax LR 2051 33 STC 333 (Orissa)	6

Mr S C Manchanda, Sr Advocate Mr R A Gupta, and Mr Ujjal Singh, Advocates with him, for Appellant Mr S T Desai, Sr Advocate Mr H. K. Puri, Mr M. N Tandon, and Mr Randhir Chawla, Advocates with him, for Respondent.

PATHAK, J — The short question in this appeal by special leave is whether ammonia paper and ferro paper can be described as paper other than hand made paper for the purposes of the notification No ST 3124/X 1012(4) 1965 dated July 1 1966 issued under the U P Sales Tax Act, 1948

2 The respondent assessee is a dealer in stationery and drawing material, and sells ammonia paper and ferro paper In assessment proceedings under the U P Sales Tax Act, 1948 for the assessment year 1966-67 the assessee claimed that ammonia paper and ferro paper were liable to tax as unclassified goods at the rate of two per cent prescribed by S 3 of the Act The claim was not accepted by the Sales Tax Officer who held that ammonia paper and ferro paper fell under the entry paper other than hand made paper included in notification No ST 3124/X 1012(4) — 1965 dated July 1 1966 and its turnover was therefore liable to tax at six per cent Against the assessment so made the assessee appealed, but his appeal was dismissed by the Assistant Commissioner (Judicial) Sales Tax A revision petition by the assessee thereafter was dismissed by the Revising Authority At the instance of the assessee a reference was made to the Allahabad High Court for its opinion on the following question

Whether ammonia paper and ferro paper fall within the category of paper?

2A The High Court has expressed the view that ammonia paper and ferro paper being chemically coated paper used for obtaining prints and sketches of site plans were paper to which a chemical process had been applied and a chemical coating had been given, and were not paper in the popular sense of the word, and therefore did not fall within the entry in the aforesaid notification of July 1 1966 Accordingly it answered the question referred to it in the negative in favour of the assessee and against the Commissioner of Sales Tax

3 In this appeal, the entire contention on behalf of the Commissioner of Sales Tax is that the opinion expressed by the High Court is erroneous and that upon a proper view ammonia paper and ferro paper must be regarded as paper other than hand made paper within the meaning of the aforesaid notification of July 1 1966

4 Section 3 of the U P Sales Tax Act charges sales tax on goods sold by a dealer at a specified rate the charge being imposed on every sale in the series of sales through which the commodity may pass commencing from the manufacturer to the ultimate retail dealer It imposes a multi point tax Section 3A of the Act, however provides for the imposition of sales tax on one only of the sales of the commodity in the series of sales the single point being specified by notification by the State Government. If ammonia and ferro paper fall under the entry paper other than hand

*S T R No 357 of 1971 D/ 19-2 1973 (All)

made paper mentioned in notification ST 3124/X (1012/4) — 1965 dated July 1 1966 the turnover of ammonia and ferro paper sold by the assessee is liable to tax at six per cent. The charge is imposed on the sale either by the manufacturer or by the importer Presumably the assessee is either the manufacturer of ammonia paper or ferro paper or their importer If ammonia paper and ferro paper do not fall within the aforesaid notification the turnover of such paper is liable to sales tax under S 3 of the U P Sales Tax Act at two per cent on every sale in the series of sales through which the goods pass

5 According to the facts admitted between, the parties the following extract set forth in the assessee s revision petition explains accurately the nature of ammonia paper and ferro paper

The ferro and ammonia paper is made of paper of rough and special texture by applying a chemical process and giving chemical coating thereon The chemicals which are used are dye tartaric acid, therein ethylene glycole and some other chemicals These chemicals are absorbed by the base paper and the coated paper is again passed through another set of rollers so that the chemicals are properly and evenly impregnated in the base paper It is only this chemical coating which is important for making the use of ammonia and ferro paper otherwise it is nothing but an ordinary rough base paper This ferro and ammonia paper has got only this specific use of obtaining prints and sketches of site plans and it cannot be used as an ordinary paper because of these special texture and its chemical properties

6 The paper is used for preparing prints and sketches of site plans An impression of the print or sketch is made on the paper and it is then exposed to light for a period of time during which the chemical evaporates resulting in the emergence of the print or sketch of the site plan Plainly ammonia paper and ferro paper cannot be regarded as paper in the popular sense of that term. Paper is used for printing or writing or for packing Ammonia paper and ferro paper are not employed for any of the purposes and subjected to any of the processes for which a paper as commonly understood, is generally used. In State of U P v Kores (India) Ltd. (1977) 39 STC 8 (AIR 1977 SC 132) this Court held that carbon paper was not paper as envisaged by the relevant entry in notification No ST 3124/X 1012/4) — 1965 dated July 1 1966 and referred to the fact that carbon paper was manufactured by coating issue paper with a thermosetting ink based mainly on wax non drying oils, pigments and dyes by means of a suitable coating roller and equalising rod and then passing it through chilled rolls It is used between two sheets of plain paper in order to reproduce on the lower sheet that which is written or typed on the upper sheet, making a replica or carbon copy of the original document The learned Judges observed that carbon paper could not be applied to the same uses to which paper as generally understood, was used, that is to say for preparing, writing or printing or for packing or drawing on or for decorating or covering the walls of a room Indeed the learned Judges appear to have approved of this very judgment under appeal when considering the question whether carbon paper could be regarded as paper within the aforesaid notification Learned counsel for the Commissioner of Sales Tax has invited our attention to Maharaja Book Depot v State of Gujarat (1979) 2 SCR 138 (AIR 1979 SC 180) where this Court laid down that exercise books were included within the term paper mentioned in sub-cl (viii) of cl (a) of S 2 of the Essential Commodities Act, 1955 and in Item 13 of Schedule I to the Gujarat Essential Articles Dealer (Regulation) Order 1971 The learned Judges supported their conclusion by reference to the object and purpose of the Act and the Regulation Order That case in our opinion is distinguishable from the instant case On the contrary more to the point is the decision of the Orissa High Court in State of Orissa v Gestetner Duplicators (P) Ltd (1974) 33 STC 333 (1974 Tax LR 2051) where it was held that stencil paper was not paper within the meaning of serial No 7A of the Schedule to the notification issued by the State Government under the first proviso to sub-s (1) of S 5 of the Orissa Sales Tax Act 1947

7 Accordingly we agree with the High Court that ammonia paper and ferro paper do not fall within the entry paper other than

[illegible] made under notification No. ST [illegible] dated July 1, 1966.

8. The appeal is dismissed with costs.

Appeal dismissed.

1986 ALL. L. J. 254

= AIR 1986 Supreme Court 388

Reports: AIR 1979 NOC 123 (All)
= (1979) 5 All LR 10

R. S. PATHAK AND M. P. THAKKAR, JJ.

Civil Appeal No. 162 of 1979. D/- 21.11.1985.

Union of India, Appellant v. M/s Lakshmi Sugar & Oil Mills Ltd., Hardoi, Respondent.

Sugar Undertakings (Taking Over of Management) Act, 1978, S. 3(1)(b) — Cane dues — Arrears exceeding permissible limit — Arrears cannot be confined to certain period — Total arrears up to a particular date have to be calculated. AIR 1979 NOC (All) 123 (1979) 5 All LR 10 Reversed.

The permissible limit of arrears of cane dues can not be confined to the cane purchased between the commencement of the instant sugar year, and the date of the sugar year when cognizance of the matter was taken. The permissible limit merely constitutes a standard for determining whether the arrears of cane dues fall within the permissible limit or have exceeded it. It does nothing more than that. It cannot be extended as a criterion for determining whether the arrears of cane dues should be confined to the sugar purchased during the instant sugar year or can include also the arrears in relation to sugar purchased during an earlier sugar year. The language of the clause is clear. It speaks of arrears of cane dues in relation to the cane purchased before that date". The language is wide enough to include all the arrears of cane dues accumulated up to that date, including the arrears pertaining to sugar cane purchased in earlier years. AIR 1979 NOC (All) 123 (1979) 5 All LR 10 Reversed. (Para 8)

Mr. M. S. Gujaral, Sr. Advocate, Mr. Dalveer Bhandari and Mr. R. N. Poddar, Advocates with him for Appellant. Mr. L. Chandra Kishore and Mr. Brij Bhushan Sharma, Advocates for Respondent.

PATHAK, J. — This appeal by special leave is directed against the judgment and order of the Allahabad High Court allowing a writ petition and quashing an order made by the Central Government under s. 3(1)(b) of sub-para (2) of para 3 of the Sugar Undertakings (Taking Over of Management) Ordinance, 1978 and a consequential order issued under sub-para (4) of para 4 of the Ordinance.

2. The respondent company manufactures sugar from sugar cane. On November 18, 1978 the Central Government issued a notice under sub-para (1) of para 3 of the Sugar Undertakings (Taking Over of Management) Ordinance, 1978 (hereinafter referred to as the Ordinance) stating that as on November 15, 1978 the respondent was in arrears of cane dues in relation to the cane purchased before that date for the purpose of its sugar undertaking to the extent of more than ten per cent of the total price of the cane purchased by it during the immediately preceding sugar year, the total arrears being 475.99 lacs and that as the Central Government was satisfied that the effective functioning of the sugar undertaking was necessary for the purposes of the said Ordinance, the Central Government called upon the respondent to explain in writing the circumstances in which the sugar undertaking had failed to clear the arrears of cane dues and why the undertaking should not be taken over by the Central Government under that Ordinance. On November 25, 1978 the respondent replied to the notice denying that it was in arrears to the extent of Rs. 475.99 lacs and claimed the right to tender oral and documentary evidence on a date fixed for the hearing of the case. However, the Central Government issued an Order S.O. 696(E) dated December 1, 1978 reciting that it was satisfied after considering the report sent by the respondent that the arrears of cane dues in excess of ten per cent had not been cleared by the respondent and directing that the management of the sugar undertaking would vest in the Central Government for a period of three years commencing on and from December 2, 1978.

3. The respondent filed a writ petition in

the Allahabad High Court and on December 19 1978 the High Court allowed the writ petition holding that while the Central Government could take action in respect of the arrears due in respect of sugarcane purchased during the current sugar year (that is to say the sugar year during which the action is taken) it could not do so in respect of the arrears pertaining to a preceding sugar year and therefore the impugned orders were invalid The order dated December 1 1978 and the consequential order were quashed and the appellant was directed to hand over possession of the sugar undertaking to the respondent

4 The Ordinance has since been replaced by the Sugar Undertakings (Taking Over of Management) Act, 1978 which while repealing the Ordinance adopts everything done or action taken under the Ordinance as if it had been done or taken under the corresponding provisions of the Act

5 The Preamble of the Sugar Undertakings (Taking Over of Management) Act, 1978 (hereinafter referred to as the Act) recites that for maintaining the continuity of production of sugar for avoiding undue hardship to cane producing farmers and to best subserve the interests of all sections of the people it is expedient in the public interest to provide for the taking over for a limited period the management of very sugar undertaking which fails or ceases to manufacture sugar or which fails to pay promptly amounts due for the cane acquired for the purposes of the undertaking Sub-s (1) of S 3 of the Act provides —

3 (1) Where the Central Government is satisfied —

(a) that any sugar undertaking has in any sugar year failed to commence the manufacture of sugar on or before the appointed day in respect of that year or having started the manufacture of sugar on or before that day ceased to manufacture sugar before the expiry of the average period of manufacture of sugar in relation to that undertaking or

(b) that on any date in any sugar year any sugar undertaking has in relation to the cane purchased before that date for the purposes of the undertaking arrears of cane dues to the extent of more than ten per cent of the total price of the cane purchased for the purposes of the undertaking during the immediately preceding sugar year and

(c) that in such case the effective functioning of the undertaking is necessary for the purposes of this Act

the Central Government may issue a notice in such form and in such manner as may be prescribed to the owner or the manager of such sugar undertaking calling upon such owner or manager to show in writing within such time not being less than five days as may be specified in the notice the circumstances under which such undertaking has so failed to commence or ceased to manufacture sugar or as the case may be clear the said arrears of cane dues and to show cause why the management of such undertaking should not be taken over by the Central Government under this Act

And sub-s (2) of S 3 reads —

(2) As soon as may be after the receipt of the report under sub-section (1) from the sugar undertaking or where the sugar undertaking has failed to make such report within the time specified in the notice to that undertaking under sub-section (1) after the expiry of such time the Central Government may make such further inquiry (if any) as it may deem fit, and —

(a) if the Central Government is satisfied that having regard to all the circumstances of the case and the purposes of this Act it would be expedient to give further time to the undertaking to enable it to commence or resume production of sugar or as the case may be clear the arrears of cane dues it may by order in writing, specify the date on or before which and the manner in which such undertaking shall commence or resume production of sugar or as the case may be clear the said arrears of cane dues or

(b) if the Central Government is not satisfied as provided in clause (a) declare by notification that the management of such undertaking shall vest in the Central Government on and from such date as may be specified in such notification.

The expression "sugar year" has been defined by cl. (g) of S 2 of the Act to mean the period of twelve months commencing on the 1st day

of October and ending with the 30th day of September next following. Sub-s. (3) of S. 3 of the Act provides that a notification issued under sub-s. (2) for vesting the management of a sugar undertaking in the Central Government shall be in force for such period not exceeding three years from the date of vesting as may be specified in the notification and that although such period may be extended the total period for which the management may remain vested in the Central Government should in no case exceed three years from the date of vesting.

6. From the facts set out before the High Court, it appears that the management of the undertaking had been taken over on the ground that the respondent had not paid in full the price of the sugarcane purchased before November 15, 1978 and that included the sugarcane purchased during the sugar year 1977-78 and the arrears so due were more than ten per cent of the total price of the cane purchased during the sugar year 1977-78. It was contended by the respondent that the arrears of cane price for the sugar year 1977-78 could not be a ground for making the impugned order. It was urged that cl. (b) of sub-para (2) of para 3 of the Ordinance on a proper construction thereof, empowered the Central Government to initiate action for assuming the management of the undertaking only if the arrears of cane price were due for sugarcane purchased during the period from the commencement of the sugar year 1978-79 to November 15, 1978, which period would fall within the sugar year 1978-79. The contention found favour with the High Court, and it granted relief on the writ petition.

7. It is apparent from an analysis of the provisions of the Ordinance and thereafter the Act which replaced it, that the principal purpose of the legislation is to put mismanaged sugar undertakings into proper functioning order by empowering the Central Government to assume the temporary management of the undertakings. The legislation indicates two kinds of cases evidencing such mismanagement. One is the failure of the undertaking to commence the manufacture of sugar on or before the appointed day in the sugar year, or where the sugar undertaking having started the manufacture of sugar on or before that day has ceased to manufacture sugar before the expiry of the average period of manufacture of sugar. Vide cl. (a) of sub-s. (1) of S. 3. The other is the case where the sugar undertaking has accumulated arrears of cane dues up to a date in a sugar year to the extent of more than ten per cent of the total price of the cane purchased during the immediately preceding sugar year. Vide cl. (b) of sub-s. (1) of S. 3. The two cases merely provide evidence from which a presumption can be drawn that the sugar undertaking is in distress. In both cases the statute further requires that the Central Government should be satisfied that the effective functioning of the undertaking is necessary for the purposes of the Act, that is to say, for maintaining the continuity of the production of sugar, for avoiding undue hardship to cane producing farmers and for best subserving the interests of all sections of the people. Vide cl. (c) of sub-s. (1) of S. 3. In other words, what the legislation intends is that where a sugar undertaking has been so mismanaged that either the undertaking has failed to commence the manufacture of sugar in the sugar year or having commenced manufacture has ceased to carry it on during the sugar year or has accumulated arrears of cane dues in excess of the prescribed standard, then in all these cases it must further be determined whether the effective functioning of the undertaking is necessary for the purposes mentioned earlier and only upon being so satisfied can the Central Government assume the temporary management of the undertaking. It takes over the undertaking temporarily in order to put it back on the rails after removing the aberrations and shortcomings responsible for the mismanagement and restoring the undertaking to a normal condition of effective functioning. The action intended under the legislation is intended to serve more than the object of recovering the arrears of cane dues. If the object of recovering arrears of cane dues alone was the purpose to be achieved, there was already sufficient provision in existing statutes such as the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 which by S. 17 thereof provides for the recovery of arrears of cane dues. The impugned Ordinance and Act cannot be considered at par with statutes providing merely for the recovery of

dues As has been explained earlier the object of the legislation covers a wider range of purpose

8 The argument of the respondent before the High Court was that the permissible limit of arrears of cane dues had been defined as ten per cent of the total price of the cane purchased during the immediately preceding sugar year and this it was said requires the court to confine the arrears of cane dues to the cane purchased between the commencement of the instant sugar year and the date in the sugar year when cognisance of the matter was taken We are not satisfied that cl (b) of sub-s (a) of S 3 should be so limited The permissible limit merely constitutes a standard for determining whether the arrears of cane dues fall within the permissible limit or have exceeded it It does nothing more than that It cannot be extended as a criterion for determining whether the arrears of cane dues should be confined to the sugar purchased during the instant sugar year or can include also the arrears in relation to sugar purchased during an earlier sugar year The language of the clause is clear It speaks of arrears of cane dues in relation to the cane purchased before that date It seems to us that the language is wide enough to include all the arrears of cane dues accumulated up to that date including the arrears pertaining to sugarcane purchased in earlier years

9 In the result the appeal is allowed the judgment and order dated December 10 1978 of the High Court is set aside and the writ petition is dismissed As the point is one of first impression there is no order as to costs

Appeal allowed

1986 ALL L J 257

= AIR 1986 Supreme Court 403

(From AIR 1972 All 292)

E S VENKATARAMIAH AND R B MISRA JJ

Civil Appeals Nos 988 and 989 of 1972 D/ 29-11 1982

Somaiya Organics (India) Ltd Appellant v Board of Revenue U P Respondent

And

Godavari Sugar Mills Ltd Appellant v Board of Revenue U P Respondent

Stamp Act (2 of 1899), S 24, Sch. 1B, Art 23 — Stamp duty — G Company selling lands and buildings to S Company subject to equitable mortgage executed by G Company for obtaining deferred payment guarantee from Bank — Amount of such contingent liability under equitable mortgage would also be chargeable for stamp duty

The object of S 24 is very clear That section means that when a purchaser purchases a property for a certain amount subject to the payment of another debt actual or contingent he is virtually purchasing the property for the said amount plus the amount of the debt and the aggregate of the two amounts ought to be treated as the true amount for which the property is being sold Otherwise there is bound to be a difference between the true consideration and the consideration which is made liable to stamp duty (Para 16)

In the instant case G Company sold certain lands and buildings and machinery to S Company for a consideration of Rs 36 64 678 The sale deed recited that out of the above said sum Rs 28 88 678/- represented the price payable for the machinery vehicles stores finished goods etc being all moveable items the sale and transfer of which had been completed by the parties to the document by manual delivery and the balance of Rs 7 76 000/- represented the price payable in respect of the lands and buildings of the sugar factory and the said document was being executed for the purpose of conveying title in respect of the lands and buildings free of all

---

LC/LC/G778.85/VNP

income tax. The above Rs 2 76 000 was to be paid not in cash but in the form of allotment of 2760 fully paid up equity shares of the face value of Rs 100 each. Before execution of the sale deed both the Companies passed the resolutions authorising transfer of properties under the document subject to the equitable mortgage in favour of the Bank stated earlier by the G company by depositing the deeds of the properties including lands and buildings for obtaining deferred payment guarantee up to 65 lakhs from the Bank. The resolution passed by the Board of Directors of S Company contemplated the execution of a tripartite agreement between amongst G and S Company and the Bank treating the deferred payment guarantee issued in favour of Foreign Company having been given at the instance and on behalf of S Company confirming the equitable mortgage and transferring the liability thereunder as mentioned in the draft tripartite agreement which had been placed before the Board for its consideration S Company also executed a deed of declaration stating that it had purchased the properties subject to the equitable mortgage executed by G Company in favour of the Bank All the three documents namely the sale deed and the two deeds of declarations executed by G Company and by S Company respectively acknowledging that the sale was subject to the equitable mortgage were presented before the Sub Registrar for registration On ground of deficient stamp duty the Sub Registrar impounded the sale deed and the deeds of declarations and forwarded them to the Collector for necessary action On reference the High Court held that the sum of Rs 65 lakhs for which the equitable mortgage had been created on the property transferred under the sale was to be treated as part of the consideration for the conveyance in question under S 24 The value on which stamp duty was payable under the Act as per Art 23 in Schedule I B thereto was Rs 2 76 000 being the total of Rs 2 76 000 mentioned in the deed and Rs 65 lakhs being the contingent liability under the equitable mortgage and directed that appropriate stamp duty should be collected on Rs 2 76 000/

Held that the view of the High Court that the amount of Rs 65 00 000/ should also be deemed as part of the consideration for the sale and that stamp duty was leviable on Rs 2 76 000 under S 24 was proper

(Para 18)

Cases Referred Chronological Paras

(1978) 2 All ER 110 (1978) 2 WLR 85 Coventry City Council v Inland Revenue Commrs 14

AIR 1965 SC 1092 (1965) 2 SCR 269 17

(1960) 3 All ER 481 (1960) 3 WLR 48 Independent Television Authority v Inland Revenue Commr 13

AIR 1959 All 655 17

(1916) 1 KB 306 114 LT 111 85 LJ KB 356 Underground Electric Rly Co of London Ltd & Glyn Mills Currie & Co v Inland Revenue Commr 13

(1959) 2 KB 604 101 LT 51 78 LJ KB 1158 County of Durham Electrical Power Distribution Co v Inland Revenue Commr 13

1906 AC 21 93 LT 819 75 LJ KB 117 Underground Electric Rly Co Case 13

(1904) 1 H & C 838 159 ER 347 10 LT 655 Mortimore v Inland Revenue Commrs 14

(18. 2) 118 ER 400 22 LJ QB 87 Lord Carming v Raper 11

VENKATARAMIAH, J — The appellant in Civil Appeal No 988 of 1972 is Somaiya Organics (India) Ltd (hereinafter referred to as Somaiya Organics) and the appellant in Civil Appeal No 989 of 1972 is Godavari Sugar Mills Ltd (hereinafter referred to as the Godavari Sugar Mills) These two appeals are filed under Art 136 of the Constitution against the judgment of the High Court of Allahabad in Miscellaneous Reference No 466 of 1969 (reported in AIR 1972 All 252) which was a reference made by the Chief Controlling Revenue Authority Board of Revenue Uttar Pradesh under S 57 of the Indian Stamp Act 1899 (hereinafter referred to as the Act) as in force in the State of Uttar Pradesh involving the question relating to the proper stamp duty chargeable in respect of a transaction under which certain lands and buildings belonging to Godavari Sugar Mills were sold in favour of Somaiya Organics The facts of the case are these

2 Godavari Sugar Mills was the owner of a distillery plant consisting of the lands buildings machinery etc situated in the village called Basaha alias Captainganj in the district of Deoria State of Uttar Pradesh It had entered

into a technical collaboration agreement with M/s Mc[illegible] Bezons and in that connection pursuant to the resolution of its Board of Directors passed on October 2[illegible] 1964 it had obtained a deferred payment guarantee up to the limit of Rs 62 lakh from the Punjab National Bank Ltd in favour of M/s Speichim Paris under an equitable mortgage by deposit of title deeds of the property including the lands and building referred to above That on March 2[illegible] 1962 Godavari Sugar Mills had resolved to sell the lands buildings and machinery to Somiya Organics for a consideration of Rs [illegible]6 64 678/ and pursuant to the said resolution a sale deed was executed on May 20 1968 The sale deed recited that out of Rs [illegible]6 64 678/ referred to above Rs 28 88 678/ represented the price payable for the machinery vehicles store finished goods etc being all moveable items the sale and transfer of which had been completed by the parties to the document by manual delivery and the balance of Rs 7 76 000/ represented the price payable in respect of the lands and buildings of the sugar factory as described in Schedule A attached to the said document and that the said document was being executed for the purpose of conveying title in respect of the lands and buildings free of all incumbrances The above Rs 7 76 000/ was to be paid not in cash but in the form of allotment of 7760 fully paid up equity shares of the face value of Rs 100/ each The document further stated that in case the vendee was to pay any amount on account of any charge or incumbrances created by the vendor on the properties sold the vendee would be entitled to get back the entire sale consideration with interest at 1 per cent per month from the vendor That on October 28 1968 a declaration was signed for and on behalf of the Godavari Sugar Mills by the two Directors of the Godavari Sugar Mills who had been authorised to do so which had the effect of modifying or correcting certain error which had crept into the document dated May 20 1968 It stated inter alia

3 On the 19th day of December 1964 the company deposited with the Punjab National Bank Ltd (hereinafter referred to as the Bank) the title deeds of the Company aforementioned immoveable property with intent to create a security in favour of the Bank by way of equitable mortgage The creation of such security by way of equitable mortgage was authorised by a resolution of the Board of Directors of the Company passed on the 23rd day of October 1964 A list of title deeds so deposited with the Bank is set out in the Second Schedule hereto

4 By a Deed of Sale dated the 20th day of May 1968 said made between Somiya Organics India Limited the vendor of the first part and M/s Somiya Organics India Limited the vendee of the other part called the S O I L of the other part the Company transferred with effect from 1st June 1968 all its right title and interest in the said immoveable property described in the First Schedule hereto along with the Buildings standing thereon in favour of the S O I L for the consideration and on the terms and conditions set out in the said Deed of Sale dated 20th May 1968

5 Through inadvertence and oversight it has been stated in the said Deed of Sale that the Company had conveyed that the entire property sold was free from all sorts of transfer charges or incumbrances created by the Vendor (the company) in favour of any one" In the said Deed of Sale it was so further stated that in case of vendee (the S O I L) might have to pay any amount by way of charge transfer or incumbrance created by the vendor (the company) on the said property the vendee (the SOIL) shall be entitled to get back the entire sale consideration with interest at 1 per month from the said vendor (the Company) We say that it was not the intention either of the company or of the S O I L to transfer the said immoveable property described in the First Schedule hereto free from the charge created by the Company in favour of the Bank by way of Equitable Mortgage by deposit of title deeds as aforesaid and it was only through oversight and inadvertence that it was erroneously stated in the said Deed of Sale that the property was free from any incumbrance or charge or that in the event of the S O I L having to pay any amount by way of charge transfer or incumbrance the S O I L should be entitled to get back the entire sale consideration as said aforesaid

6 We solemnly and sincerely declare and say that the intention of the company as also the S O I L was that the said immoveable property should be transferred subject to the charge created in favour of the Bank by the Company by deposit of title deeds on the 19th day of December 1964 as stated in paragraph 3 above [illegible] undertaking by us

7 As can be seen from the extract of the declaration given above that the properties which were being transferred under the document dated May 20 1968 was being sold subject to the equitable mortgage which had been created in favour of the Punjab National Bank Ltd in connection with the deferred payment guarantee Before the above

declaration was signed resolutions were passed by the Board of Directors of Godavari Sugar Mills and the Board of Directors of Somaiya Organics on 17th September 1968 affirming transfer of property under the document dated May 20 1968 subject to the equitable mortgage in favour of the Punjab National Bank Ltd up to the limit of Rs 65 lakhs The resolution passed by the Board of Directors of Somaiya Organics on the 17th September 1968 referred to above contemplated the execution of a tripartite agreement by and amongst Godavari Sugar Mills Somaiya Organics and the Punjab National Bank Ltd treating the deferred payment guarantee issued in favour of M/s Speciflum Paris as having been given at the instance and on behalf of Somaiya Organics confirming the equitable mortgage and transferring the liability thereunder as mentioned in the draft tripartite agreement which had been placed before the Board for its consideration Somaiya Organics also executed a deed of declaration on October 28 1968 stating that it had purchased the properties sold under the document dated May 20 1968 subject to the equitable mortgage executed by Godavari Sugar Mills in favour of the Punjab National Bank Ltd All the three documents namely the sale deed dated May 20 1968 and the two deeds of declarations executed by Godavari Sugar Mills and by Somaiya Organics respectively acknowledging that the sale was subject to the equitable mortgage were presented before the Sub Registrar Hata for registration The document dated May 20 1968 had been written on a stamp paper of Rs 35 000 treating that the consideration for the sale deed was Rs 7 76 000 The Sub Registrar was of the view that the properties had been sold subject to two liabilities one for Rs 1 20 00 000 and another for Rs 65 00 000/ According to him the total consideration payable for the sale was in the order of Rs 1 92 76 000 and there was deficiency of stamp duty of Rs 8 32 420/ He was also of the view that each of the two supplementary deeds of declarations which had been written on stamp papers of Rs 3 50 should have been written on stamp papers of Rs 4 50 and one rupee was payable on each of them as deficient duty The Sub Registrar accordingly impounded the sale deed and the deeds of declarations and forwarded them to the Collector for necessary action The Collector in his turn under S 56(2) of the Act referred the matter to the Chief Controlling Revenue Authority i e Board of Revenue Uttar Pradesh The Chief Controlling Revenue Authority i e Board of Revenue thereafter referred the case to the High Court of Allahabad under S 57 of the Act In its reference the Board of Revenue referred six questions for the opinion of the High Court

4 The reference was first heard by the High Court in March 1970 By its order dated March 2 1970 the High Court referred the case back to the Chief Controlling Revenue Authority Uttar Pradesh directing it to submit a fresh statement of the case incorporating certain additions and alterations referred to in that order along with certain other documents Accordingly a fresh statement of the case was submitted to the High Court In the reference the following six questions were referred to the High Court for its opinion

1 Whether in view of the above opinion of the Board the principal sale deed dated 20-5 1968 is a conveyance not only of the lands and buildings but also the machineries fixed in the earth in consideration of Rs 36 64 678/ in the light of S 24 of the Stamp Act and is chargeable with a duty of Rs 9 97 425/ under Art 23 Schedule I B of the U P Stamp (Amendment) Act 1962 as against Rs 35 000/ paid?

or

2 Whether the sale deed aforesaid is a conveyance only of lands and buildings in consideration of Rs 7 76 000/ plus Rs 1 85 00 000/ total Rs 1 92 76 000/ in the light of S 24 of the Stamp Act and is chargeable with a duty of Rs 8 67 420/ under Art 23 aforesaid as against Rs 35 000/ paid?

or

3 Whether the sale deed aforesaid does not fall within the ambit of S 24 of the Stamp Act and is a conveyance of the lands and buildings along with machineries fixed in the earth in consideration of Rs 36 64 678/ and is chargeable with a duty of Rs 1 74 925/ under Art 23 aforesaid as against Rs 35 000/ paid?

or

4 Whether the sale deed aforesaid does not fall within the ambit of S 24 of the Stamp Act and is conveyance of lands and buildings only in consideration of Rs 7 76 000/ only and is sufficiently stamped with a duty of Rs 35 000/ under Art 23 aforesaid?

or

5 If the sale deed aforesaid does not fall under any of the alternatives mentioned above what should be deemed to be its consideration for payment of stamp duty under Art 23 aforesaid read with S 4 and S 24 of the Stamp Act?

or

6 Whether the other two documents are supplementary deeds within meaning of S 4 of

the Stamp Act and were liable as such to a duty of Rs 4 50 as against Rs 3 50 paid in each case)

5 On the basis of the above six questions the High Court formulated two questions for its consideration by reframing the questions referred to it (1) what was the correct duty chargeable under the Stamp Act in respect of the sale deed dated May 20 1968 and (2) whether the other two documents were supplementary deeds within the meaning of S 4 of the Stamp Act and were liable as such to duty of Rs 4 50 as against Rs 3 50 paid in each case? The High Court by its judgment dated December 23 1971 which is under appeal found that the two deeds of declaration were supplementary to the sale deed dated May 20 1968 and all the three should be read together to ascertain the terms of sale settled between the parties It held that the intention of the parties was that the immoveable property was being transferred subject to the equitable mortgage created in favour of the Punjab National Bank Ltd for Rs 65 00 000/ Accordingly it held that under S 4 of the Act the duty of Rs 4 50 was payable as against Rs 3 50 on the two declarations The High Court also held that the inclusion of Rs 1 20 00 000/ in the consideration for the sale was incorrect because the property sold was not subject to the payment of that loan That was a loan facility given by the Punjab National Bank to Somaiya Organics and the property given as security therefor was the property of Somaiya Organics and not the property which was being sold The sale was also not subject to that debt This need not detain us any longer since the correctness of this part of the order is not questioned by any party before us Similarly the inclusion of Rs 28 88 678/ which was the price of the moveables i e the machinery etc was also held by the High Court to be not part of the consideration as they did not constitute the subject matter of sale They had already been sold by manual delivery This part of the case also is not in question before us The High Court however held that the sum of Rs 65 lakhs for which the equitable mortgage had been created on the property transferred under the sale was to be treated as part of the consideration for the conveyance in question under S 24 of the Act It accordingly held that the value on which stamp duty was payable under the Act as per Art 23 in Schedule I B thereto was Rs 72 76 000/ being the total of Rs 7 76 000/ mentioned in the deed and Rs 65 lakhs being the contingent liability under the equitable mortgage and directed that appropriate stamp duty should be collected on Rs 72 76 000 in the case of the document dated May 20 1968 and Rs 4 50 as against Rs 3 50 on each of the two declarations Aggrieved by the inclusion of Rs 65 lakhs in the value for purposes of levying duty Godavari Sugar Mills and Somaiya Organics have filed these two appeals

6 The provision of law which arises for consideration in this case is S 24 of the Act It reads thus

24 Where any property is transferred to any person in consideration wholly or in part of any debt due to him or subject either certainly or contingently to the payment or transfer of any money or stock whether being or constituting a charge or incumbrance upon the property or not such debt money or stock is to be deemed the whole or part as the case may be of the consideration in respect whereof the transfer is chargeable with ad valorem duty

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No 18 of Schedule I

Explanation — In the case of a sale of property subject to a mortgage or other incumbrance any unpaid mortgage money or money charged together with the interest (if any) due on the same shall be deemed to be part of the consideration for the sale

Provided that where property subject to a mortgage is transferred to the mortgagee he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage

Illustrations

(1) A owes B Rs 1 000 A sells a property to B the consideration being Rs 500 and the release of the previous debt of Rs 1 000 Stamp duty is payable on Rs 1 500

(2) A sells a property to B for Rs 500 which is subject to a mortgage to C for Rs 1 000 and unpaid interest Rs 200 Stamp-duty is payable on Rs 1 700

(3) A mortgages a house of the value of Rs 10 000 to B for Rs 5 000 B afterwards buys the house from A Stamp-duty is payable on Rs 10 000/ less the amount of Stamp-duty already paid for the mortgage "

7 The meaning of S 24 in short is that where property is conveyed to a person for consideration wholly or in part of any debt due to him subject either certainly or contingently to the payment or transfer of any money or stock whether or not charged on the property then the debt money or stock is to be deemed the whole or part as the case may be of

consideration in respect of which the conveyance is charged with ad valorem stamp duty. The Explanation to S. 24 of the Act provides that in the case of a sale of property subject to a mortgage or other incumbrance any unpaid mortgage money or money charged or secured with the interest if any due on the same may be deemed to be part of the consideration for the sale. A contingent liability to the payment of any debt means such outstanding debt or possible adverse verdict which has to be complied with but which is not ascertained on the relevant date. A security for any contingent future payments also falls within the ambit of S. 24 of the Act.

8. In the instant case though in the first agreement dated May 20, 1966 it had been stated that the properties mentioned in schedule A thereunder being conveyed free from all incumbrances by the two deeds of conveyance dated October 28, 1965 executed on behalf of Godavari Sugar Mills and Somaiya Organics it was made very clear that the said properties were being conveyed subject to the equitable mortgage up to the limit of Rs. 60,000. It may be that on that date no liability as such had actually arisen. But the terms of the mortgage were such that there was the contingency of the liability up to Rs. 60,000 materialising. Pursuant to the particular arrangement entered into between Godavari Sugar Mills and Somaiya Organics a letter was addressed to the Punjab National Bank on December 15, 1964 which read as follows:

THE GODAVARI SUGAR MILLS LTD

E 3/4 4 5 December 15, 1964

The Punjab National Bank Ltd
Karimjee House Branch
Sir P. M. Road
Bombay—1

Dear Sirs

REF: Deferred Payment Guarantee for Rs. 65 Lakhs in favour of M/s. Speichim of Paris

With reference to the above facility which your bank has agreed to give to our Company we beg to record that at the meeting of the Board of Directors held on Friday the 23rd October 1964 our Board has approved of and agreed to the terms and conditions on which the captioned Guarantee is to be issued by your Bank to the Company and for the sake of good order we beg to hereby record that your Bank at our request has agreed to mutually issue the said guarantee to us on the terms and conditions set out in the letter dated 16th October 1964 bearing ref. No. Loans/24241 addressed by the Bank Head Office to the Manager, B. O. Karimjee House Bombay and a copy of which is hereto attached for ease of reference.

We hereby confirm that our Company and our Directors will do all acts, matters and things necessary to carry out and implement the terms and conditions to be observed and performed as envisaged in the said letter dated the 16th October 1964.

As desired by you we have passed the necessary resolutions at the meeting of our Board of Directors held on the 23rd October 1964. A true and complete copy of the relevant portion of the minutes of the said meeting is annexed as Ex. A to the Joint Declaration of (i) K. J. Somaiya and (ii) Shri S. K. Somaiya which is sent herewith. We also record that pursuant to the authority given to our Director Shri K. J. Somaiya in that behalf we have through Shri K. J. Somaiya deposited with you all the title deeds of our immoveable properties as Captioned against with intent to create security thereon by way of equitable mortgage, the intention of the parties being that your Bank may look to the said security and therefrom reimburse, realise and recover all monies that the Bank may have to pay or disburse by reason or as a result of or in connection with the issue of the above captioned guarantee, and also all costs, charges and expenses which the Bank may incur (and in case of legal costs the attorney and client costs).

We also send herewith the Counter indemnity duly executed by us and our two Directors Shri K. J. Somaiya and Shri S. K. Somaiya.

Yours faithfully

For the Godavari Sugar Mills Ltd
For K. J. Somaiya & Sons Private Ltd
Sd/-
Director Managing Agents
(Underlining by us)

9. On the basis of the above letter the title deeds in respect of the property now sold had been handed over to the Bank creating an equitable mortgage up to Rs. 65,00,000/-. It is true that the Bank had not actually paid any amount under the Deferred Payment Guarantee to M/s. Speichim even by April 29, 1969 as can be seen by the letter of that date written by the Bank which read thus

THE PUNJAB NATIONAL BANK LTD
PNB HOUSE
SIR P. M. ROAD
BOMBAY

Ref. LA B/3404/69 29.4.1969

M/s. The Godavari Sugar Mills Ltd
Fazalbhoy Building
Mahatma Gandhi Road
BOMBAY 1

Dear Sir

Ref. Equitable Mortgage to Captainganj Distillery

We thank you for your letter No. E/3474/2754 dt. 26.4.1969 and have to inform you that you had created equitable mortgage in favour of the Bank on 14.12.1964 in respect of your immoveable property known as Captainganj Distillery as security for Deferred Payment Guarantee issued by us on 15.12.1964 on your behalf in favour of M/s. Speichim Paris. Subsequently on 6.11.1968 the name of M/s. Somaiya Organics (India) Ltd. was substituted for the name of your company in the said Deferred Payment Guarantee to the effect that the said guarantee be treated as having been issued by us for and on behalf of the said M/s. Somaiya Organics (India) Ltd.

We hereby confirm that we have not so far made any payment whatsoever either on behalf of your company or on behalf of M/s. Somaiya Organics (India) Ltd. in respect of the above guarantee either to M/s. Speichim Paris or to any other party.

Thanking you

Yours faithfully
Sd.
Manager

10. But it is however clear that the mortgage which had been created on December 14, 1964 was alive on the date of the transaction and it was in force even on April 29, 1969 though the mortgagee had been substituted by the purchaser of the property i.e. Somaiya Organics. The Deferred Payment Guarantee being in force even on April 29, 1969 the contingent liability under the equitable mortgage was also very much in existence on the date of sale i.e. May 20, 1968 even though no payment had been made by the Bank to M/s. Speichim Paris. If on any future date the Bank was compelled to pay any amount under the guarantee given by it such amount up to the limit of Rs. 65,00,000 could be realised by the Bank by enforcing the mortgage against the property in question. If it was not the position there would have been no necessity to execute the two deed of declaration stating that the properties were being sold subject to the mortgage.

11. Lord Cairns in Rayner (1882) 19 ER 401 is a case in point. That case concerned the stamp duty payable on an assignment by a debtor by way of mortgage in favour of one who had stood surety for the debtor. The question was whether the assignment was a security for the payment of money to be thereafter lent, advanced or paid within the meaning of Part I of the Schedule to the Stamp Act, 1812 which was in force in England. It was held that a security for contingent future payment was as much within the words and meaning of the statute as a security for certain future payments. In Mortimore v. Inland Revenue Commrs. (1864) 2 H. & C. 838 which was decided about 12 years later the vendor had sold a property subject to a mortgage debt which was expressed to become payable if but only if the vendor's predecessor died without male issue. The point was whether the said contingent debt had to be taken into account under the wording of S. 10 of the English Stamp Act, 1853 the relevant part of which read thus:

> Where any Lands or other Property shall be sold and conveyed subject to any Mortgage or other Debt or to any gross or entire Sum of Money, such Sum of Money or Debt shall be deemed the Purchase or Consideration Money or Part of the Purchase or Consideration Money.

Martin B. delivering the judgment of the Court said:

> we think that the words of the enactment any mortgage or other debt include contingent debts as well as absolute ones...

12. In the case before us we need not read contingent debts into the statutory provision in S. 24 of the Act because it expressly refers to any debt which may become contingently payable which should be deemed to be part of the consideration.

13. In Independent Television Authority v. Inland Revenue Commrs. (1960) 2 All ER

481 the appellant who was liable to pay stamp duty objected that the total stamp duty payable could not be determined at the date when the document was tendered for stamping owing to the clause for increase or decrease qualifying a liability contracted earlier This argument was rejected on the broad principle that such words as money payable when used in the English Stamp Act 1891 intended money payable either on a contingency or as a certainty Lord Radcliffe with whom Lord Tucker and Lord Morris agreed observed thus

I take it therefore to be a well-settled principle that the money payable is ascertained for the purposes of charge without regard to the fact that the agreement in question may itself contain provisions which will in certain circumstances prevent it being payable at all If that is so there is at least no better reason for adopting a different principle when there are found clauses which merely vary the amount to be paid according to specified contingencies Nor does it matter for this purpose whether the effect of such a clause is to make it possible for the sum to be increased or to be diminished In County of Durham Electrical Power Distribution Co v Inland Revenue Commrs (1909) 2 KB 604 any variation would have been downwards in the Underground Electric Rls Co case 1906 AC 21 (that is the first case) the variation might have been upwards or downwards What is necessary is that it should be possible to ascertain from the agreement that there is some specified sum agreed on as the subject of payment which may perhaps fairly be called the prima facie or basic payment Even that minimum condition may have to be restated in relation to certain kinds of securities such for example as guarantees in which the ad valorem charge is calculated according to the maximum sum contingently payable or to put it in another way the amount of the guarantee see Underground Electric Rls Co of London Ltd & Glyn Mills Currie & Co v Inland Revenue Commrs (1916) 1 KB 306"

14. In Coventry City Council v Inland Revenue Commrs., (1978) 1 All ER 1107 the Chancery Division has followed the above principle after reviewing all the cases referred to therein

15 It was however argued by the learned counsel for the appellants that the liability of the document for the stamp duty was dependent upon what was written in it and the Court should not look at anything else to decide the reference made under S 57 of the Act It is not necessary to consider the correctness of this proposition in this case since it is the case of the appellants themselves that what was a sale free from all incumbrances originally was treated as a sale subject to the equitable mortgage from the very beginning when the deeds of declaration were written Had the document of May 20 1968 been the only document then questions would have arisen whether the recital therein that the consideration for the properties which were considered sufficient by the Bank to secure Rs 65 00 000/ could truly be Rs 7 76 000/ and whether the said recital amounted to a fraud on the stamp law or not We are relieved of the duty to decide the said questions in view of the deeds of declaration which treated the sale as one subject to the mortgage the maximum liability under which at a future time could be Rs 65 00 000/ If the sale had been free from mortgage then any such contingent future liability would have fallen on the vendor Godavari Sugar Mills But the parties to the sale took adequate precaution to prevent any such liability being there against the Godavari Sugar Mills by making it very clear that the said liability to the Bank would be on the properties sold in the hands of the purchaser Somaiya Organics and by stating that under the tripartite agreement which was to be executed the Bank would treat Somaiya Organics as the Company responsible for that debt in the place of Godavari Sugar Mills The Bank had in fact written to the Godavari Sugar Mills on April 29 1969 that on November 6 1968 the name of Somaiya Organics had been substituted for the name of the Godavari Sugar Mills in the Deferred Payment Guarantee to the intent that the said guarantee be treated as having been issued by us for and on behalf of the said M/s Somaiya Organics (India) Ltd

16. The object of S 24 of the Act is very clear That section means that when a purchaser purchases a property for a certain amount subject to the payment of another debt actual or contingent he is virtually

purchasing the property for the said amount plus the amount of the debt and the aggregate of the two amounts ought to be treated as the true amount for which the property is being sold Otherwise there is bound to be a difference between the true consideration and the consideration which is made liable to stamp duty To illustrate take the present case itself The properties which had been treated as sufficient security by the Bank for the liability of Rs 65 00 000/ must be ordinarily much more valuable than Rs 65 00 000/ but on the date of conveyance stamp duty would have become payable only on Rs 7 76 000/ but for the above rule in S 24 of the Act In this case the amount of Rs 7 76 000/ must have been fixed by the parties taking into consideration the liability to the Bank under the mortgage which might arise in future

17 The two decisions on which reliance was placed by the appellants are of no assistance to them The first one was Sidhnath Mehrotra v Board of Revenue AIR 1959 All 655 In that case the High Court of Allahabad held that where an immoveable property which was encumbered by a charge or mortgage was sold but not subject to the incumbrance then the amount of money constituting the charge or mortgage need not be added to the consideration mentioned in the conveyance as the value of the property sold The next decision is the decision of this Court which was rendered on appeal against the above decision of the Allahabad High Court The said decision is Board of Revenue Uttar Pradesh v Sidhnath Mehrotra (1965) 2 SCR 269 (AIR 1965 SC 1092) This Court affirmed the decision of the Allahabad High Court and dismissed the appeal of the Revenue In the transaction involved in these two decisions the sale was free from all incumbrances or any mortgage In such case even if there was some mortgage money which had remained unpaid the Explanation to S 24 of the Act could not be relied on by the Revenue to insist upon payment of stamp duty on such unpaid mortgage money But the facts of the case before us are different Here the sale was in fact subject to the equitable mortgage in favour of the Bank Hence these decisions are of no avail to the appellants

18 We are of the view that the High Court in its well-considered judgment has rightly taken the view that the amount of Rs 65 00 000/ should also be deemed as part of the consideration for the sale and that stamp duty was leviable on Rs 72 76 000/ under S 24 of the Act

19 The appeals therefore fail and they are dismissed with costs

Appeals dismissed

1986 ALL. L. J 265

K N SINGH AND A SRIVASTAVA JJ

Munna Jaiswal Petitioner v District Magistrate Varanasi and another Respondents

Habeas Corpus Petn No 5398 of 1985 D/ 14-8 1985

National Security Act (65 of 1980), S. 3(2) — Detention under — Counter version of incident given by detenu in FIR — Non consideration by magistrate — Order of detention is vitiated

Failure of the District Magistrate to consider the counter version of the incident given by detenu in FIR which formed the ground of detention vitiates the satisfaction of the magistrate as regards the involvement of detenu in the incident and consequently the order of detention 1985 All LJ 1222 (FB) Relied on (Para 6)

Cases Referred Chronological Paras

1985 All LJ 1222 (FB) 6

P Basu for Petitioner Dy Govt Advocate for Respondents

K N SINGH, J — By means of this petition under Art 226 of the Constitution the petitioner has challenged validity of his continued detention in pursuance of the order of the District Magistrate Varanasi dated Feb 19 1985 issued in exercise of powers under S 3(2) of the National Security Act 1980

2. The District Magistrate has passed the order of detention against the petitioner on

only one ground. The ground supplied to the petitioner states that on 6-2-1985 at about 12.00 noon the petitioner along with his associates Sita Ram s/o Mukund Rai Ramesh Anil Rai and Akhilesh Rai attacked Anil Singh and his companions Arun Chaubey A. Jha Jaiswal and others with bombs and country made pistols when they were passing through the Avasanganj crossing as a result of which several passersby received injuries. A criminal case under S. 307 149 IPC was registered against the petitioner at police station Jaitpura. The ground further states that Avasanganj crossing is situated in a thickly populated area where 12.00 noon crowd of persons is present. As a result of murderous assault made by the petitioner on Anil Singh and his associates the entire area was gripped with fear terror and tension. The residents of the locality closed their doors and windows due to fear which adversely affected public order. The order further states that on these facts the District Magistrate who was the detaining authority was satisfied that the petitioner's detention was necessary with a view to prevent him from indulging into activities prejudicial to public order.

3. The petitioner has asserted that on 6-2-85 at about noon he was proceeding along with his two friends on a rickshaw towards Lohatia. When he reached near Avasanganj crossing Anil Singh accompanied by Bhaiya Lal Suresh and Rama Shankar and others attacked him with country made pistols and bombs causing serious injuries to him and a few passersby. On receiving the injuries the petitioner rushed to Kabirchaura hospital where he was given medical aid. The petitioner has further asserted that from hospital he sent a written report through his brother to the police station and in pursuance thereof a criminal case was registered against Anil Singh and others. It being crime No. 19 of 1985 under S. 307 149 IPC at police station Jaitpura at 2.30 p.m. The injuries were examined by the Medical Officer of Kabirchaura Hospital at 1.05 p.m. who found three multiple gun-shot injuries on the petitioner's body. The petitioner has further asserted that Anil Singh and others had no defence but his father Sri Nath Singh lodged a first information report at police station Jaitpura on 6-2-85 at 16.15 hours under S. 307/149 IPC against the petitioner and others on the allegation that the petitioner along with Sita Ram Ramesh Anil Rai and Akhilesh Rai had attacked Anil Singh and his associates with bombs and country made pistols at Avasanganj crossing but Anil Singh and others escaped. Some passersby were injured. On the basis of the first information report crime No. 19A of 1985 was registered at the police station Jaitpura. On the basis of the allegations contained in the first information report lodged by Srinath Singh Anil Singh's father against the petitioner and his associates the District Magistrate passed the impugned order of detention.

4. The petitioner's grievance is that his version of the incident was not placed before the District Magistrate nor he considered the same before arriving at the requisite satisfaction as contemplated by S. 3(2) of the Act. In paragraphs 18 and 19 of the petition the petitioner stated that the first information report lodged by the petitioner's brother and the petitioner's injury report were not placed before the District Magistrate. Sri R. S. Todia District Magistrate who passed the order of detention has filed his own affidavit. In paragraph 15 of his affidavit he has stated that he had considered the entire material copies of which had been furnished to the detenu. There is no averment or even suggestion in the affidavit of the District Magistrate that at any stage version of the incident as contained in the petitioner's first information report was placed before him by the police or that he had considered the same before arriving at the requisite satisfaction that the petitioner's detention was necessary to prevent him from indulging into activities prejudicial to the public order. On the material on record it is crystal clear that the first information report relating to crime No. 19/1985 lodged on behalf of the petitioner and the versions contained therein were never placed before the District Magistrate nor he considered the same.

5. The question which falls for consideration is what is the effect of the failure of the District Magistrate to consider the version of the incident given by the petitioner in his first information report. As the first information report lodged on behalf of the petitioner contained version of the incident according to which the petitioner was the victim of the assault made by Anil

Singh and others it became a relevant material There were two versions of the same incident one given by the petitioner and the other given by Srinath Singh According to the version of the petitioner he had not indulged in any activity which could be said prejudicial to public order instead he himself was victim of the assault On the other hand Srinath Singh had given a different version of the same incident according to which petitioner had committed assault on Anil Singh and his friends In this view the version of the incident as given by the petitioner in his FIR was relevant material which ought to have been placed before the District Magistrate and he should have considered the same Had the first information report lodged by the petitioner been placed before the District Magistrate and if he had occasion to consider the same he may not have passed the detention order on the basis of the report lodged by Srinath Singh

6 In Habeas Corpus petition No 12439 of 1984 (reported in 1985 All LJ 1222) Sheshadhar Misra v Supdt Central Jail Naini Allahabad a Full Bench of this Court held that if the version of the person proposed to be detained was already there in all fairness the detaining authority must consider that version also along with that of the public (police) before making up his mind whether or not he should act upon the report of the police The Full Bench further held that since the District Magistrate had failed to consider the counter version given by the detenu relating to the incident which formed the ground of his detention the order of detention was vitiated Applying the principles laid down by the Full Bench there appears to be no doubt that in case the District Magistrate had looked into the counter version of the incident as given by the petitioner in the first information report it was likely that he would not have acted upon the police report in passing the order of detention The satisfaction of the District Magistrate was likely to be affected by the material facts as contained in the petitioner s first information report Therefore the satisfaction of the District Magistrate with regard to the involvement of the petitioner in attacking Anil Singh and others as referred in the ground of detention stands vitiated

7 In the result petition succeeds and is accordingly allowed The petitioner shall be set at liberty forthwith unless required to be detained in some other case

Petition allowed

1986 ALL L J 267

I P SINGH AND R P SHUKLA JJ

Habib Ullah Appellant v The State Respondent

Criminal Appeal No 1728 of 1977 D 18 3 1985 *

Evidence Act (1 of 1872), S 32 — Dying declaration — Value

The documents which are desired to be treated as dying declaration should be of such a nature as to inspire full confidence of the Court in their correctness In other words there should not be any discrepancy in them which should throw doubt upon the veracity of contents Further such statements also need to be corroborated from other circumstances and the evidence on record (Para 7)

P N Misra for Appellant Deputy Govt Advocate for Respondent

I P SINGH, J — Habib Ullah convict appellant has preferred this appeal against the judgment and order of Sri D N Shukla Additional Sessions Judge Banda dated 11 8 1977 convicting the appellant under sections 302 and 307 I P C and sentencing him to imprisonment for life and seven years (the Sessions Judge by mistake omitted to mention whether this sentence of seven years would be simple or rigorous) Both the sentences were ordered to run concurrently

2 The prosecution case is that Mohammad Razi alias Dadua complainant the deceased was a notorious person against whom the police had started a case under section 110 Cr P C on the basis of the police report dated 1 3 1973 He was said to be forcibly realising money from the local shop keepers Mohammad Razi alias Dadua was one of the local shop keepers running a vegetable shop just as Habib Ullah appellant was also running a vegetable shop

*Against order of D N Shukla Addl S J Banda D/ 11 8 1977

3 The prosecution further case is that in the night between 23rd and 24th June 1973 the deceased and his wife Smt Mahjabin (P W 1) were sleeping on separate cots in front of their shop on Badosa Road At about 1 30 a m the appellant accompanied by four other accused (out of whom Shakir had died before that trial while the remaining three were acquitted by the learned Sessions Judge) came there and threw sulphuric acid on both the deceased and his wife According to the prosecution an electric bulb fitted to the electric pole situate close to the shop of the deceased was on and when both the victims were awakened as a result of the sulphuric acid thrown on them they were able to see the f e miscreants running away Since they were known to them they were recognized by them

4 The first information report of this incident lodged by the deceased himself at Police Station Atarra within district Banda two Km away at 2 00 a m Both the injured were medically examined by Dr P N Singh M O District Hospital Banda on 24-6 1973 between 4 30 a m and 4 45 a m According to their injury reports both of them had received extensive burns of second degree on various parts of their bodies Since the burns of their eyes would be relevant for the purpose of this appeal we would make special mention about them Mohammad Razi alias Dadua complainant (deceased) had too second degree burns on the entire face so much so that the eye lids were burnt and the eye balls were shrunken There was photophubia present so much so that the patient did not permit the doctor to have full examination of the eyes However the eyes of Smt Mahjabin had escaped unhurt It may also be noted that Mohammad Razi alias Dadua had subsequently died of the said injuries and his post-mortem examination report given by Dr Vinay Martin Medical Officer Moti Lal Nehru Hospital Allahabad dated 13-7 1973 confirms that the eyes of the deceased were burnt apart from the various other parts of his body The cause of death was reported to be shock on account of the said burns

5 The appellant had denied having committed this crime and alleged that he was falsely implicated in this case on account of enmity The defence did not even lead any evidence in defence

6 The prosecution examined in all four witnesses including Smt Mahjabin (P W 1) and Lassad (P W 2) who was reported in the first information report to have reached the spot and witnessed the occurrence Smt Mahjabin (P W 1) was declared hostile by the prosecution and was subjected to cross examination by the prosecution After assessing the evidence on record the learned Sessions Judge convicted and sentenced the appellant as above while acquitted the others All the accused including the appellant standing their trial before the learned Sessions Judge were however acquitted of the charge under section 147 I P C

7 The first information report was lodged by Mohammad Razi alias Dadua (deceased) himself In it he made a statement that all the five accused named therein had thrown acid on him and his wife He claimed that he was awakened by throwing of acid on him and then he saw in the light of the electric pole nearby that the five accused were running away and he recognized them However from the medical evidence on record already discussed above it appears to us that perhaps he was not in a position to open his eyes after the acid had fallen on them We have our doubts if he was able to see any body running away The learned Deputy Government Advocate has however relied upon the statement of the deceased which was recorded by the Investigating Officer under section 161 Cr P C in which he stated that all the five accused had come to the spot near their cots and it was by the sound (Ahat) of their arrival that they had awakened He then added that soon after Shakir (since dead) and Habib Ullah accused had thrown acid on them which they were carrying in glasses He claimed that he and his wife had recognized the five miscreants in the light of the bulb from the electric pole nearby It is argued by the learned Deputy Government Advocate that this statement as well as the first information report should be taken to be the dying declaration and since

they implicate the appellant so these statements should be sufficient to confirm his conviction and sentence

The learned counsel for the appellant has pointed out that the said documents which are desired to be treated as dying declaration should be of such a nature as to inspire full confidence of the Court in their correctness In other words his argument is that there should not be any discrepancy in them which should throw doubt upon the veracity of their contents It is also argued that such statements also need to be corroborated from other circumstances and the evidence on record We agree with this argument and try to appreciate the same in that light

We have discussed above that there was perhaps no opportunity for the deceased complainant to see or recognize the appellant and his companions inasmuch as it was not possible for him to open his eyes after being poured with acid Besides in the first information report he states that the acid was thrown on them when he and his wife were asleep and it was only after throwing acid that they were awakened However in his statement under section 161 Cr P C he has taken a contrary stand by asserting that both he and his wife were awakened by the sound (Ahat) of the approach of miscreants and it was then that they had recognized them so much so that the acid was carried in glasses by Shakir and Habib Ullah appellants only and it was thrown by them Since the two versions materially differ we do not find ourselves in a position to place implicit reliance thereon Besides the best witness in the circumstances of the case would be his wife Smt Mahjabin (P W 1) she in her statement stated that there was no light at all and it was pitch dark This was a very damaging statement to the prosecution case So she was treated hostile and was permitted by the Court to be cross examined by the State Counsel She admitted that although the electric pole was situate only two or three paces away from the shop yet confirmed in the cross-examination directed by the defence that the said pole had no bulb as it had been broken some time back She in her cross-examination by the State Counsel stated that both she and her husband had not recognized any of the miscreants She added that her husband had become unconscious so much so that the entire face and eye and other parts of his body were badly hit by the acid According to her he was not in a position to speak and was taken to the Thana while unconscious Nothing substantial could be brought out by the learned State Counsel in her cross-examination and the conclusion drawn by the learned Sessions Judge that she was deposing falsely and concealing the true facts under the influence of the accused persons or her second husband cannot be said to be completely warranted by the circumstances or the evidence given by her Although the presence of Smt Mahjabin on the spot cannot be denied inasmuch as she had suffered acid burns on her body but from her statement as discussed above no guilt can be fastened on to the appellant

8 Lassad (P W 2) is of course named in the first information report but he has stated that he had reached the spot after the incident and did not see any of the miscreants there but only found the deceased and his wife lying there with acid burns Of course his statement under section 161 Cr P C contained the fact that Dadua (deceased) had told him (soon after the occurrence) that acid was thrown by Shakir Habib Ullah Raja Ram Baratlal and Maiku but no reliance can be placed on this statement inasmuch as we have discussed above that the deceased was not in a position to see or recognize the miscreants and in that perspective he could not have named these persons before Lassad

9 As a result of the above discussion we have no hesitation to conclude that the prosecution had miserably failed to prove the guilt of the appellant His appeal must succeed

10 The appeal is allowed The conviction and sentence awarded by the learned Sessions Judge to him are set aside He is acquitted of all the charges against him He is on bail He need not surrender to his bail bonds which are cancelled His sureties are discharged

Appeal allowed

1986 ALL L J 270

(LUCKNOW BENCH)

K N GOYAL AND B KUMAR, JJ

Krishna Dutt Bajpai Petitioner Distt Inspector of Schools Rae Bareli Respondent

Writ Petn No 3863 of 1984 D/ 1 1 1984

(A) U P Intermediate Education Act (2 of 1921) S 16A and scheme of administration framed thereunder — Scheme cannot be regarded as piece of subordinate legislation like Rules, Regulations, etc and hence writ petition would not lie merely for enforcing such scheme AIR 1977 All 539 (FB), Foll (Para 3)

(B) U P High Schools and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Act (24 of 1971), S 5 — Opening of separate account for disbursement of salaries — S 5 does not speak about manager who could operate such account. (Para 4)

Cases Referred Chronological Paras

AIR 1977 All 539 (FB) 3

Pradeep Kant, for Petitioner Chief Standing Counsel for Respondent

ORDER — The petitioner claims to be the Manager of Shri Ganesh Vidyalaya Inter College The Committee of Management passed a resolution dated 29-10-84 annex 9 directing that the joint salary account maintained under the U P High Schools and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Act 1971 (for short the 1971 Act) shall in future be operated by the Assistant Manager Sri Virendra Mohan Tripathi instead of by the Manager on behalf of the Committee of Management A Copy of this resolution was sent to the District Inspector of Schools (for short D I O S) The D I O S in pursuance of this resolution intimated the bank on 31 10-84 vide annex 8 that the said account will be operated by Sri Tripathi instead of by the petitioner Thereafter the D I O S sent a further communication to the bank on 7 11 84 stating that all the accounts Nos 404 405 406 407 230 332 and 884 of the institution shall be operated by Sri Tripathi instead of by the petitioner The D I O S also sent attested specimen signatures of Sri Tripathi to the bank Aggrieved by these decisions the petitioner has come to this Court under Art 226 of the Constitution His grievance is that under the scheme of administration the power to operate the accounts vests in the petitioner as Manager The Manager was elected by the general body and he did not hold the office at the pleasure of the Committee of Management The committee had therefore no right to take away his powers as Manager The D I O S also has no power to pass an order approving the action of the Committee of Management to the extent it was contrary to the provisions of the scheme of administration framed under S 16 A of the Intermediate Education Act

2 We have heard learned counsel for the petitioner

3 So far as S 16 A is concerned it clearly lays down that the Committee of Management shall be vested with the authority to manage and conduct the affairs of the institution There is no doubt that it has to frame a scheme of administration which has to be approved by the Director of Education But as held by a Full Bench of this Court in Aley Ahmad Abadi v D I O S AIR 1977 All 539 (para 19) the scheme cannot be regarded as a piece of subordinate legislation like the Rules Regulations Statutes and Ordinances which an Act empowers the Government or the statutory bodies under the Act to make or frame The writ petition would not therefore lie merely for enforcing the scheme of administration though the petitioner may seek his remedy through a civil suit as against the Committee

4 We are therefore concerned only with the legality of the action of the D I O S Section 5 of 1971 Act aforesaid provides that a separate account should be opened for the purposes of disbursement of salaries and that the said account shall be operated jointly by a representative of the management and by the D I O S or his representative It does not speak anywhere of the manager as such nor does it provide that the representative of the Committee shall be the Manager We have already held above that the scheme of

administration is not statutory It cannot be indirectly enforced through a writ petition by contending that the D I O S should not have accepted any one other than the Manager as the representative of the institution The letter of the D I O S issued to the bank on 31 10 84 annex 8 cannot therefore be successfully assailed However so far as his other letter dated 7 11 84 annex 10 is concerned if it relates to any account other than salary account maintained under 197 Act then the same would not be binding on the bank We are not aware of any communications that the management might have sent to the bank nor it is necessary for us to consider the effect of such communication As stated above the matter is between the petitioner and the Committee of Management which can conceivably be raised through a civil suit

5 With these observations the writ petition is dismissed in limine

Petition dismissed

1986 ALL L J 271

= AIR 1986 Supreme Court 589

(From Allahabad)*

E S VENKATARAMIAH AND R B MISRA JJ

Civil Appeal No 18 of 1986 D/ 7 1 1986

Ganpat Giri Appellant v IInd Additional District Judge Balia and others Respondents

Civil P C (Amendment) Act (104 of 1976), S 97 — Civil P C (5 of 1908), O 21 R 72 (as amended in U.P before 1976) and R 72A — R 72 (as stood in U.P before 1976) does not remain in force in view of addition of R 72A in O 21 by Amendment Act retaining sub-rules (2) and (3) of R 72 and overriding effect given to amended provisions by S 97 of the C.P C (Amendment) Act (1976) after the said Act came into force — Fact that no amendment was made to R 72 by the Amendment Act is irrelevant C M W P No 2754 of 1981 D/ 9-4-1985 (All) Reversed

*C M W P No 2754 of 1981 D/ 9-4-1985 (All)

(Interpretation of Statutes — Repeal and Saving)

The effect of S 97(1) of Civil P C (Amendment) Act (104 of 1976) is that all local amendments made to any of the provisions of the Code either by a State Legislature or by a High Court which were inconsistent with the Code as amended by the Amending Act stood repealed irrespective of the fact whether the corresponding provision in the Code had been amended or modified by the Amending Act and that was subject only to what was found in sub-sec (2) of S 97 Therefore even though R 72 has not been amended as R 72A has been added in O 21 retaining sub rules (2) and (3) of R 72 by the amendment Act it cannot be said that because no amendment had been made to R 72 of O 21 of Civil P C by the Amending Act S 97(1) had no effect on the Rule as it was in force in the State of Uttar Pradesh before the commencement of the Amending Act Thus the amended R 72 of O 21 which was in force in the State of Uttar Pradesh prior to Feb 1 1977 i e the date on which Amendment Act came into force would not continue to be in force after that date Consequently an order allowing application by judgment-debtor for setting aside sale of his property on the ground that the decree-holder had not obtained permission of executing court as required by O 21 R 72 (as amended in U P) was not proper C M W P No 2754 of 1981 D/ 9 4 1985 (All) Reversed (Paras 6 11 12)

Mr S N Kacker Sr Advocate (Amicus Curiae) and Mr B S Chauhan Advocate with him for Appellant Mr Sunil K Jain Advocate for Respondents

VENKATARAMIAH, J — We are principally concerned in this case with the effect of S 97 of the Civil P C (Amendment) Act 1976 (104 of 1976) (hereinafter referred to as the Amending Act) on any amendment made or any provision inserted in the Civil P C 1908 (hereinafter referred to as the Code) by a State Legislature or a High Court prior to the commencement of the Amending Act i e prior to Feb 1 1977 in the different local areas in India where the Code is in force if they be inconsistent with the provisions of the Code as amended by the Amending Act

S 97(1) of the Amending Act reads thus —

any amendment made or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act stand repealed

2 The above provision is however subject to sub-sec (2) of S 97 of the Amending Act which provides that notwithstanding that the provisions of the Amending Act have come into force or the repeal under sub-sec (1) of S 97 of the Amending Act has taken effect and without prejudice to the generality of the provisions of S 6 of the General Clauses Act 1897 the provisions in clauses (a) to (zb) of that sub-section would prevail Sub-sec (3) of S 97 of the Amending Act provides that save as otherwise provided in sub-sec (2) the provisions of the principal Act as amended by the Amending Act shall apply to every suit proceeding appeal or application pending at the commencement of the Amending Act or instituted or filed after such commencement notwithstanding the fact that the right or cause of action in pursuance of which such suit proceeding appeal or application is instituted or filed had been acquired or had accrued before such commencement

3 The principal Act referred to in S 97 is the Code By the Amending Act several amendments were carried out to the Code on the basis of the recommendations of the Indian Law Commission which had considered extensively the provisions of the Code before it submitted its 54th Report in 1973 By the time the Law Commission took up for consideration the revision of the Code there were in force in different parts of India several amendments to the Code which had been effected by the State Legislatures or by the High Courts The subject of civil procedure being in Entry 13 of List III of the Seventh Sch to the Constitution it is open to a State Legislature to amend the Code insofar as its State is concerned in the same way in which it can make a law which is in the Concurrent List S 122 of the Code empowers the High Courts to make rules regulating the procedure of civil courts subject to their superintendence as well as rules regulating their own procedure These rules no doubt must not be inconsistent with the body of the Code But they can amend or add to rules in the First Sch to the Code S 129 of the Code which is overlapping on S 122 of the Code to some extent confers power on the Chartered High Courts to make rules as to their original civil procedure As mentioned earlier before the Amending Act came into force on Feb 1 1977 many of the provisions of the Code and the First Sch had been amended by the State Legislatures or the High Courts as the case may be and such amended provisions had been brought into force in the areas over which they had jurisdiction When the Amending Act was enacted making several changes in the Code Parliament also enacted S 97 providing for repeals and savings and the effect of the changes on pending proceedings

4 There are three sub-sections in S 97 of the Amending Act A reading of S 97 of the Amending Act shows that it deals with the effect of the Amending Act on the entire Code both the main part of the Code consisting of sections and the First Sch to the Code which contains Orders and Rules S 97(1) of the Amending Act takes note of the several local amendments made by a State Legislature and by a High court before the commencement of the Amending Act and states that any such amendment shall except insofar as such amendment or provision is consistent with the provisions of the Code as amended by the Amending Act stands repealed It means that any local amendment of the Code which is inconsistent with the Code as amended by the Amending Act would cease to be operative on the commencement of the Amending Act i e on Feb 1 1977 The repealing provision in S 97(1) is not confined in its operation to provisions of the Code including the Orders and Rules in the First Sch which are actually amended by the Amending Act The object of S 97 of the Amending Act appears to be that on and after Feb 1 1977 throughout India wherever the Code was in force there should be same procedural law in operation in all the civil courts subject of course to any future local amendment that may be made either by the State Legislature or by the High Court as the case may be in accordance with law Until such amendment is made the Code as amended by the Amending Act alone should govern the procedure in civil courts which are governed by the Code We are emphasising

this in view of the decision of the Allahabad High Court which is now under appeal before us

5 This appeal by special leave is filed against the judgment dt April 9 1985 in Civil Misc Writ Petn No 2754 of 1981 on the file of the High Court of Allahabad

6 Jamuna Chaubey respondent 3 herein obtained a decree for recovery of money on July 29 1977 against the appellant Ganpat Giri in Original Suit No 359 of 1973 on the file of the Munsiff East Balia In execution of the said decree the immoveable property belonging to the appellant was brought to sale by court on Aug 4 1978 and at that court sale respondent 3 was declared as the successful bidder Before the sale was confirmed on Aug 12 1978 the appellant filed an application for setting aside the sale under R 90 of O 21 of the Code on several grounds Later on he made an application stating that the sale was liable to be set aside as the respondent 3 who was the decree holder had not obtained the permission of the executing court under R 72(1) of O 21 of the Code The delay in filing that application was condoned The executing court upheld the plea of the judgment-debtor the appellant herein relying upon sub rule (3) of R 72 of O 21 of the Code and set aside the sale by its order dated Feb 20 1979 since admittedly no such permission had been obtained by the decree holder The application under R 90 of O 21 of the Code was dismissed as not pressed Another prayer made under R 89 of O 21 of the Code was rejected on the ground that it had become infructuous Aggrieved by the decision of the executing court respondent 3 filed a revision petition before the District Judge Balia under the provisions of S 115 of the Code (as amended by S 3 of the Civil P C (Uttar Pradesh (Amendment) Act 1978 with effect from Aug 1 1978) The District Judge dismissed the revision petition on Oct 13 1980 Against the decision of the District Judge respondent 3 filed a petition under Art 226 of the Constitution before the High Court of Allahabad That petition was allowed by the High Court holding that the case was governed by R 72 of O 21 of the Code as it was in force in the State of Uttar Pradesh before the Amending Act came into force It may be stated here that both the executing court and the District Judge had upheld the contention of the judgment-debtor that on the commencement of the Amending Act by virtue of S 97(1) thereof the local amendment made to R 72 of Order 21 of the Code prior to that date ceased to operate and the Code as amended by the Amending Act applied to the case The High Court however took the view that since the Amending Act had not made amendment of any kind in so far as R 72 of O 21 was concerned the amendment made by the High Court of Allahabad to R 72 of O 21 of the Code prior to the commencement of the Amending Act remained intact The High Court did not say anything on the question of condonation of delay in making the application under R 72(3) of O 21 of the Code It however stated that the application under R 89 of O 21 of the Code could still be considered by the executing court In this appeal by special leave the order of the High Court is questioned

7 For purposes of ready reference R 72 of O 21 as it is in the Code and as it was in the State of Uttar Pradesh prior to the commencement of the Amending Act is set out below

O 21 R 72 as it is in the Code

72 Decree holder not to bid for or buy property without permission — (1) No holder of a decree in execution of which property is sold shall without the express permission of the Court bid for or purchase the property

Where decree holder purchases amount of decree may be taken as payment — (2) Where a decree holder purchases with such permission the purchase money and the amount due on the decree may subject to the provisions of S 73 be set off against one another and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly

(3) Where a decree holder purchases by himself or through another person without such permission the Court may if it thinks fit on the application of the judgment-debtor or any other person whose interests are affected by the sale by order set aside the sale and the costs of such application and order and any deficiency of price which may happen on the re-sale and all expenses attending it shall be paid by the decree holder

"O 21 R 72 as it was in force in the State of Uttar Pradesh prior to the commencement of the Amending Act

Where a decree-holder purchases the property sold the purchase money and the amount due on the decree may subject to the provisions of S 73 be set off against one another and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly

The difference between the Code and the rule as it was in force in the State of Uttar Pradesh prior to the commencement of the Amending Act was that in the State of Uttar Pradesh sub rules (1) and (3) of R 72 of O 21 had been completely deleted and sub rule (2) had been renumbered as R 72 with the modification that for the words with such permission" the words "the property sold had been substituted The result was that in the case of a decree holder the need for obtaining the express permission of the executing court before offering the bid for or purchasing the property put up for sale under sub rule (1) was not there and the power of the Court to set aside the sale under sub rule (3) of R 72 in the absence of such permission had also been taken away

8 The question whether R 72 of O 21 of the Code required any modification was considered by the Law Commission before it made its recommendation in its 54th Report Its observations at Pp 182 183 of the Report are as follows

"O 21 R 72

21 36 With reference to O 21 R 72 a point was considered in the earlier Report A recommendation had been made in the Fourteenth Report to the effect that a decree holder should be allowed to purchase property unless the court has prohibited him from doing so The object of the recommendation was to avoid the delay that is frequently caused when the warrant of sale is returned unexecuted in the absence of bidders An amendment carrying out this recommendation was proposed in the draft Report on the Code which had been circulated Comments received thereon however emphasised the need for the court being aware of any proposal by the decree-holder to bid The earlier Commission thought that there was force in this approach and a decision was taken not to disturb the existing rule

We have considered this matter further and have come to the conclusion that the approach in the earlier Report on the Code was correct Hence no change is recommended

O 21 R 72

21 36-A We have considered the more fundamental question if R 72 should be retained at all The object behind this provision is to ensure fairness in the auction The decree holder if interested in purchasing the property himself can conceivably keep back or discourage (or even mislead) prospective purchasers Ordinarily the fetching of a higher purchase price would be in his interest (as likely to satisfy his claim without further execution) But it should not be forgotten that when he is the purchaser this consideration takes leave and he – like every purchaser – would like the price to be low To a certain extent he has a hand in initiating the sale though not so in theory It is he who obtains the proclamation of sale and though the rules in O 21 do not so require it is he who is expected to assist and even to guide the process-serving staff in various matters concerning execution – e g affixation of the proclamation etc He also estimates the price For these reasons it is better to keep the existing safeguard

9 Having observed thus it proceeded to recommend that a new R 72 A may be added to O 21 in which there was reference to sub rules (2) and (3) of R 72 in sub rule (3) of R 72 A

10 It is thus seen that even though R 72 was not amended by the Amending Act its retention in the form in which it was in the Code had been recommended by the Law Commission for the reasons given by it

11 Now reverting to S 97(1) of the Amending Act the High Court was in error in holding that because no amendment had been made to R 72 by the Amending Act S 97(1) had no effect on the Rule as it was in force in the State of Uttar Pradesh before the commencement of the Amending Act As observed earlier the effect of S 97(1) is that all local amendments made to any of the

provisions of the Code either by a State Legislature or by a High Court which were inconsistent with the Code as amended by the Amending Act stood repealed irrespective of the fact whether the corresponding provision in the Code had been amended or modified by the Amending Act and that was subject only to what was found in sub-sec (2) of S 97 Sub-sec (3) of S 97 provides that save as otherwise provided in sub-sec (2) the provisions of the Code as amended by the Amending Act shall apply to every suit proceeding appeal or application pending at the commencement of the Amending Act or instituted or filed after such commencement notwithstanding the fact that the right or cause of action in pursuance of which such suit proceeding appeal or application is instituted or filed had been acquired or had accrued before such commencement Sub-sec (3) of S 97 sets at rest doubts if any by making the Code as amended by the Amending Act applicable to all proceedings referred to therein subject to sub sec (2) of S 97

12 The High Court was therefore in error in holding that the amended R 72 of O 21 which was in force in the State of Uttar Pradesh prior to Feb 1 1977 continued to be in force after that date and that the court sale held in which the decree holder had purchased the property without the express permission of the executing court was unassailable under sub rule (3) of R 72

13 We do not in the circumstances of the case find any merit in the contention of the respondent 3 that the prayer made under O 21 R 72(3) of the Code was barred by time particularly because of the doubts about its applicability in the State of Uttar Pradesh being there At this stage we find it unjust to consider the plea of limitation when the High Court and the Subordinate Courts below have not found it proper to reject the application on that ground

14 The order passed by the High Court is therefore set aside and the order passed by the District Judge affirming the order of the executing court is restored

15 The appeal is accordingly allowed No costs

16. We thank Shri S N Kacker Senior Advocate who assisted us in this case at our request as amicus curiae

Appeal allowed

1986 ALL. L. J 275

= AIR 1986 Supreme Court 576

(From Allahabad)

S MURTAZA FAZAL ALI AND A VARADARAJAN JJ

Criminal Appeal No 320 of 1977 D/ 13-8 1985

State of Uttar Pradesh Appellant v Lalloo and others Respondents

(A) Criminal P C (2 of 1974), S 386 — Appeal to High Court against conviction — Sessions Court convicting accused under S 302/34 for gruesome murder and awarding sentence of death — Conviction set aside by High Court disbelieving FIR and evidence on flimsy grounds — Two views on evidence on record were not possible — Held, reversal of judgment and acquittal of accused by High Court was illegal. Decision of All. (HC), Reversed. (Para 12)

(B) Penal Code (45 of 1860), S. 302 — Murder, gruesome and cold blooded — Accused convicted under S 302/34 and sentenced to death by trial Court — High Court in appeal setting aside conviction and acquitting accused — Supreme Court in special appeal affirming conviction — Since occurrence had taken place over a decade ago the Supreme Court sentenced accused persons to undergo imprisonment for life. Decision of All (HC), Reversed. (Para 12)

VARADARAJAN, J — This appeal by special leave is by the State of Uttar Pradesh against the acquittal of the respondents Lalloo Ganga Dayal Gond Sri Kishun Chamar and Jagan Nath Godana by the High Court reversing the judgment of the trial Court which convicted them and sentenced them to death under S 302 I.P C for the murder of one Babu Jaleshwar Singh at about 8 p.m on 24-9-1974

2. The case of the prosecution has been set out in the judgments of the Courts below

Therefore it is not necessary to set out in detail the facts of the case in this judgment Suffice it to say that the prosecution case is that there was long-standing enmity between the respondents and the deceased Jaleshwar Singh who was a leading land owner and agriculturist of Mangalpura and the Pradhan of that village for 18 or 20 years before he was murdered at about 8 p m on 24-9 1974 at the end of the mooni jungle situate about 1½ furlongs away from Mangalpura village when he was coming along the footpath running through that mooni jungle in the company of Ram Surat (P W 1) Subhan Sain (P W 2) Bansidhar (P W 3) by the respondents attacking him with a tamancha (country made pistol) and daos (long heavy knives used for slaughtering goats and cutting wood) There was bright moonlight during that night it being the day of Bhado Sudi 9 and there were also torch lights with P Ws 1 and 3 P Ws 1 to 3 belong respectively to Mangalpura Ram Nagar and Shankerpura which is situate about 1½ mile north of Mangalpura P W 1 is Adhyaksha (President) of the Co-operative Society of Mangalpura besides being a member of the Gram Sabha of that village The respondent Jagan Nath belongs to Gosainpur which being a nearby village is included in Mangalpura Gram Sabha while the other three respondents belong to Mangalpura itself The respondent Jagan Nath is also a member of the same Gram Sabha There was admittedly long-standing enmity between the respondents and the deceased Jaleshwar Singh right from 1959 The deceased had stated in his complaint Ex Ka 13 dated 14-2 1973 that the respondents and one Chandrika Mallah were planning to kill him due to election and litigation enmity and were collecting money for that purpose amongst themselves The respondents and others had moved two complaints for the removal of the deceased as Pradhan of Mangalpura The first of those complaints had been rejected by the Sub Divisional Officer Ballia on 10-5 1974 while the second was pending enquiry before that Officer at the time of his death The deceased accompanied by P Ws 1 to 3 was returning on 24 9-1974 from Ballia where he had gone in connection with the enquiry into the second complaint which had been posted on that day The facts relating to the admitted enmity between the respondents and the deceased are mentioned in para 10 of the trial Court s judgment

3 When the deceased was going a little ahead of P Ws 1 to 3 in the eastern end of the Mooni Jungle the respondents emerged from the mooni plants armed Lalloo with a tamancha Sri Kishun and Ganga Dayal with daos and Jagan Nath with a whip Lalloo fired with his tamancha and the deceased fell down after receiving injury on his chest Thereafter Lalloo exhorted the other respondents for cutting the neck of the deceased whereupon the other respondents pounced upon the deceased for severing his neck When P Ws 1 to 3 shouted in disapproval of what the respondents were doing Lalloo pointed his tamancha towards them and threatened to kill them They therefore got frightened and ran towards Gosainpur and after informing Ayodhaya and Sheo that the respondents had attacked the deceased they rushed to Mangalpura where they met Kharag Bahadur (P W 6) and others and informed them also about the attack on the deceased by the respondents Subsequently all of them went to the scene of occurrence and found the deceased s headless body lying in a pool of blood

4 The first information report was written by Raghubans Tiwari (P W 16) of Mangalpura with the particulars furnished by P W 1 at the spot at about 9 p m on 24 9 1974 It was handed over by P W 1 at Bansidh police station at 11 30 p m on 24 9 1974 to the Sub Inspector of police P W 15 P W 15 left the police station along with P W 1 and others for the scene of occurrence at 1 30 a m on 25 9 1974 and he began his investigation at the spot at 4 a m

4A The headless body was identified to be that of the deceased Jaleshwar Singh by P Ws 1 3 6 and 16 and Bachchalal (P W 5) all of whom belong to Mangalpura The trunk was further identified to be that of the deceased Jaleshwar Singh with reference to the towel (Ex II) ganj (Ex III) kurta (Ex IV) dhoti (Ex V) chhata (Ex VI) hand kerchief (Ex XI) letter (Ex XII) addressed to the deceased on which he had written that he had given Rs 10/ to P W 1 for bringing witnesses and thumb impression of the deceased which had been compared with his undisputed thumb impression Autopsy on the body of the deceased Jaleshwar Singh disclosed (1) incised

wound severing the neck completely (2) multiple gun shot wounds on the upper part of the front chest and (3) abraded contusions over the upper part of the hip The doctor opined that death was due to severence of the neck by a sharp-edged and heavy cutting weapon and that the injury to the neck was sufficient in the ordinary course of nature to cause death

5 The entire prosecution case against the respondents rests on the evidence of P Ws 1 to 3 who were examined as eye witnesses and also on the evidence of P Ws 5 and 6 The learned Sessions Judge accepted their evidence and relied upon the first information report given by P W 1 and found that all the respondents had committed the brutal murder of Jaleshwar Singh on account of the admitted enmity and he accordingly convicted and sentenced them to death under S 302 read with S 34 I P C But on appeal the learned Judges of the High Court suspected the genuineness of the first information report as being that of P W 1 and rejected the evidence of P Ws 1 to 3 about the occurrence and acquitted the respondents although they found

The medical evidence leaves no room for doubt as to the factum of the occurrence and the prosecution case with regard to its time and the weapons used in the assault also receives broad corroboration from it The place of occurrence (near the eastern end of the jungle of moonj plants in village Mangalpura) is also fixed up by the recovery of blood from there

6 The case of the prosecution is that the informant P W 1 got the first information report scribed by P W 16 at the spot at about 9 p m on 24 9 1974 and presented it at the police station at 11 30 p m on the same day to the Sub Inspector of police P W 15 and that P W 15 left the police station after registering the case to the scene of occurrence along with P W 1 and others at 1 30 a m on 25 9 1974 and began his investigation at 4 a m The names of the respondents as the assailants of the deceased as well as the names of P Ws 1 to 3 as those of eye witnesses are mentioned in the first information report and all the three witnesses had been examined by P W 15 on 25 9 1974 itself although as stated earlier P W 1 alone belongs to Mangalpura and P Ws 2 and 3 belong to Shankerpura and Ram Nagar respectively The prosecution relied on the evidence of P W 5 who has stated that he saw all the respondents sitting and talking under cover of the munjahani near about the scene of occurrence at about nightfall on 24-9 1974 and that at about 8 30 or 8 45 p m on that day he heard shouts that the respondents whose names he has mentioned were beating Babu Jaleshwar Singh On hearing those shouts P W 5 ran and on the way he met P W 6 and others and he went along with them to the scene of occurrence and saw the headless body of the deceased Jaleshwar Singh lying there The evidence of P W 6 is that when he was sitting at his house at about 8 p m on the day of occurrence he heard the alarm Run up people I am being killed He took up lathi and lantern and asked his companions to proceed and when all of them were about 50 yards away from the outskirts of the village P W 6 saw P W 1 and others coming and P W 1 told him that Lalloo had shot the deceased Jaleshwar Singh with pistol that Sri Kishun and Ganga Dayal armed with daos and Jagan Nath armed with kora (whip) were sitting on the chest of the deceased and Lalloo had said cut the neck of sala Pradhan and that they (P Ws 1 to 3) ran away from the scene when Lalloo aimed the pistol at them Thereafter P W 6 and others went to the scene of occurrence and found the headless body of Jaleshwar Singh lying there and subsequently P W 1 got the report written by P W 16 and proceeded with it to the police station

7 The learned Judges of the High Court rejected the first information report on two grounds namely that it is quite long and contains all the details and that P W 1 is not the author of its contents They rejected the evidence of P Ws 1 to 3 as unreliable but accepted the evidence of P W 16 that he wrote the first information report at the police station in the presence of his own father and others to the dictation of P W 15 They acquitted the respondents and set aside the conviction and the sentence awarded to them by the trial Court

8. Mr Dalveer Bhandari learned counsel for the appellant State of Uttar Pradesh took us through the evidence of P Ws 1 to 3 and

the other witnesses as also through the judgments of the courts below and submitted that the learned Judges of the High Court were not justified in holding that P W 1 is not the author of the first information report and that it was written by P W 16 at the police station to the dictation of P W 15 He also submitted that the learned Judges of the High Court were not justified in rejecting the evidence of the eye-witnesses P Ws 1 to 3 and also of P Ws 5 and 6 and acquitting the respondents On the other hand Mr R K Garg learned counsel for the respondents submitted that the first information report is not the "brain child of P W 1 and that it had been prepared at 11 a m on 25-9-1974 as stated by P W 16 after P W 15 had visited the scene of occurrence and seen the injuries found on the headless body of the deceased Jaleshwar Singh He submitted that the evidence of P W 1 that he had gone to Ballia in connection with the enquiry into the complaint filed for the removal of the deceased Jaleshwar Singh from the office of Pradhan of Mangalpura village and that he was accompanying him from Ballia and was present at the time of the occurrence is not believable at all having regard to the fact that although it is stated in the first information report that P W 1 went to Ballia along with the deceased Jaleshwar Singh he has admitted in his evidence that he did not go with the deceased to Ballia and stated that he went to Ballia separately and reached the office of the Sub-Divisional Officer only at about 1.30 p.m on 24-9-1974 and also that his name is not mentioned in the order sheet relating to that case He further submitted that the learned Judges of the High Court were justified in rejecting the evidence of not only P W 1 but also of P Ws 2 and 3 as unreliable and that it would appear from the fact that the investigating officer had gone in search of circumstantial evidence by way of the dress shoes, letter thumb-impression etc mentioned above for identifying the headless trunk as that of the deceased Jaleshwar Singh that he did not believe the testimony of P Ws 1 to 3 who are put forward as eye-witnesses in the case

9 In our opinion the submission that the investigating officer P W 15 had no faith or honest belief in the testimony of P Ws 1 to 3 regarding the identity of the headless trunk as that of the deceased Jaleshwar Singh merely because he had looked up for other circumstantial evidence to connect the headless trunk with the deceased Jaleshwar Singh has to be stated only to be rejected for it is impossible to hold from the fact that the investigating officer looked up for some corroborative circumstantial evidence that he did not have faith or belief in the testimony of P Ws 1 to 3 as regards the identity and therefore it is not possible to rely upon the evidence of P Ws 1 to 3 that they witnessed the occurrence It will be unreasonable to hold that if there are 10 pieces of circumstantial evidence in a case an inference that the investigating officer did not have honest belief in the truth of the preceding 9 pieces of circumstantial evidence merely because he had brought on record even the tenth piece of circumstantial evidence

10 The learned Judges of the High Court were not justified in basing their conclusion that P W 1 is not the author of the first information report and that it was recorded at the police station at 11 a m on 25 9 1974 on the evidence of P W 16 who is a self condemned witness who had been treated as hostile to the prosecution It is not possible to accept the evidence of P W 16 who was admittedly present in the police station along with his father and others and had consulted his father before writing the first information report and wrote it after his father asked him to write it that he wrote it to the dictation of P W 15 at 11 a m on 25 9 1974 and dated it as 24-9-1974 as desired by P W 15 The evidence of P W 16 is highly discrepant for he has stated in one portion of his evidence that along with his father and others he reached the police station at about 10 a m on 25 9-1974 and returned from there at about 11 a m leaving only P W 1 at that place In another portion of his evidence he has stated that P W 15 came to the scene of occurrence at 8 or 9 a m on 25 9-1974 and that he (P W 16) started along with others to proceed to the police station for the scene of occurrence only at about 9 a m on that day when P W 15 arrived He has further stated P W 15 started for the scene of occurrence after he and the other persons reached the police station and that too only after the first information report was lodged at the police station He has also stated that he too accompanied P W 15 when he started from the police station at 10 or

10 30 a m and that he does not know at what time P W 15 reached the scene of occurrence Thus it is seen that P W 16 has given highly discrepant evidence regarding the time at which he reached the police station along with his father and others including P W 1 as also about the time at which he claims to have written the first information report to the dictation of P W 15 after getting the approval of his father for writing the same

11 The evidence of Uma Shankar Upadhya (P W 10) who was Head Constable at Bansidh police station is that P W 1 came to the police station at 11.30 p m on 24-9-1974 with the first information report (Ex Ka 1) and that on the basis of that report he prepared the check report (Ex Ka 21) It has been elicited in his cross-examination that Constable Ram Naresh Singh (P W 14) left the police station carrying the special reports to his superior officers at 6 05 a m on 25 9-1974 In answer to questions put to him in cross examination P W 14 has stated that he carried the special reports to his superior officers from the police station in the morning of 25-9 1974 The investigating officer (P W 15) has stated in his evidence that after receipt of the first information report at the police station in his presence he took up investigation immediately and left the police station to the scene of occurrence along with P W 1 and others at about 1 30 a m on 25 9 1974 and reached the scene of occurrence at about 4 a m after some delay as he had to cross a river on the way and wait for some time to call the boats men No doubt it has been elicited from P W 15 in the cross-examination that the first parcha of the case diary which is dated 25 9-1974 bears the signature of the Deputy Superintendent of Police and endorsement of the office of the Superintendent of Police made on 28 9-1974 but not the seal of that office From that fact alone it could not be inferred that there was delay in the receipt of the copies of relevant records from the police station in the office of the Superintendent of Police though it may be that the endorsement in that office had been made only on 28-9-1974 for even according to the evidence of P W 16 which is unreliable the first information report was in existence at least at 11 a m on 25-9-1974 In these circumstances we accept the evidence of P Ws 1 10 14 and 15 and reject the evidence of P W 16 and find that Ex Ka 1 is the only first information report in the case and that it was scribed by P W 16 at the spot on the basis of particulars furnished by P W 1 at 9 p m and handed over by P W 1 at the police station at about 11 30 p m on the same day and that only after a case had been registered on the basis of that first information report P W 15 left the police station along with P W 1 and others at 1.30 a m on 25-9-1974 and reached the scene of occurrence at 4 a m The learned Judges of the High Court in our opinion erred grievously in holding on the unreliable evidence of P W 16 alone that the first information report (Ex Ka 1) was recorded at the police station at 11 a m on 25-9-1974 If it had been recorded only at that time it is improbable that copies thereof would have been delivered by P W 14 to the higher authorities in the morning of 25 9-1974 itself

12. The learned Judges of the High Court have rejected the evidence of P W 1 for two reasons namely (1) that whereas he had stated in the first information report that he went to Ballia along with the deceased on 24-9-1974 he has stated in his evidence that he went to Ballia only later at about 1 30 p m on that day and did not accompany the deceased from Mangalpura and (2) that the name of P W 1 is not mentioned in the order-sheet of the Sub Divisional Officer Ballia relating to the case in connection with which the deceased had gone to Ballia on that day No doubt there is discrepancy between the recital in the first information report and the evidence of P W 1 on the question whether P W 1 went along with the deceased to Ballia on 24-9-1974 or had gone to Ballia separately and met the deceased at that place at about 1 30 p m on that day It is not a material discrepancy It would appear from the fact that on the letter (Ex XII) an endorsement had been made by the deceased to the effect that on 24-9-1974 he had given Rs 10/- to P W 1 for bringing witnesses that P W 1 who was his parokar might have gone to Ballia with or without witnesses on 24-9-1974 If he had not gone to Ballia on that day and had not accompanied the deceased from Ballia when he left that place for Mangalpura it is not probable that P W 1 would have been seen by P W 6 soon after the occurrence or he could have got the first information report scribed by P W 16 at 9 p m on 24-9-1974 itself and handed it over at the police station at 11.30 p.m on the same day and accompanied P W 15 from the police station to the scene of occurrence at 1.30 a m on 25-9-1974 Therefore we accept the evidence of P W 1 that he had gone to Ballia

on 24 9 1974 and had left that place for Mangalpura by a bus along with the deceased and was present at the time of occurrence and had witnessed the same The learned Judges of the High Court had not rejected the evidence of P W 2 that on 24 9-1974 he had been to Balha to meet his ailing relation Shamshuddin Sain at Baheri in Balha and was in his house up to 4 or 4 30 p m He had stated that he thereafter boarded the bus in which the deceased and P W 1 were seated for proceeding to his village for which he had to get down from the bus and cross a river They have rejected the evidence of P W 2 that he was present along with the deceased at the time of the occurrence and had seen the occurrence merely because after one crosses the dah river there are two routes to proceed to Shankerpura one of them going from the ghat towards Shankerpura and the second towards Mangalpura on the west and then north to reach Shankerpura and the learned Judges thought that it is improbable that P W 2 would have taken the route which is longer by 1 or 1½ miles instead of the shorter route proceeding from the ghat The learned Judges have failed to give the importance which it deserves to the evidence of P W 2 that much jungle falls in the first route and therefore people go by that route only during day time and that the second route is plain and therefore they go through that route during night They have also failed to take note of the fact that it was night time and P W 2 would have had the company of the deceased and P Ws 1 and 3 if he went by the longer route and would have had to go all alone if he went by the shorter route running through the ghat The learned Judges have rejected the evidence of P W 3 who is a trader in bullocks merely because he has stated in his evidence that on 24-9 1974 he went to Balha for purchasing a weak bullock whereas he had purchased a stronger bullock for Rs 1200 from nearabout his village a few days later They have observed that it is improbable that P W 3 would have gone to Balha on 24-9-1974 for purchasing a weak bullock when strong bullocks were available in the neighbourhood itself P W 3 who trades in bullocks might purchase weak as well as strong bullocks depending upon the need as rightly submitted by Mr Dalveer Bhandari The fact that P W 3 had gone to Balha for purchasing a weak bullock is not a sufficient reason for disbelieving his evidence that he had gone to Balha on 24-9-1974 for purchasing a bullock and that he travelled by the bus in which the deceased and P Ws 1 and 2 were travelling on their return from Balha on that day As stated earlier the name of not only P W 2 but those of P Ws 1 and 3 as eye witnesses are mentioned in the first information report which has been found to have been recorded at 9 p m itself at the spot and to have been handed over at Bansidh police station at 11 30 p m on the same day P Ws 1 to 3 have all been examined by P W 1 at Mangalpura on 25 9 1974 itself It is not probable that they would have been easily and readily available for examination on 25 9 1974 itself if they had not been present at the time of the occurrence and had not witnessed the occurrence P W 1 alone belongs to Mangalpura while P Ws 2 and 3 belong to different villages as already mentioned We therefore accept the evidence of P Ws 2 and 3 as well regarding their presence at the time of the occurrence and witnessing the scene P Ws 2 and 3 are independent witnesses and P W 1 is a respectable witness as he is a member of the Gram Sabha and President of the Co-operative Society though admittedly he was the parrokar of the deceased in the case for which he had gone to Balha on 24-9 1974 The name of P W 1 not finding a place in the ordersheet is not a sure basis for holding that he could not have gone to Balha on 24-9 1974 P Ws 1 to 3 have deposed about the occurrence as mentioned above and we are of the opinion that there is no convincing reason for rejecting their evidence as unreliable and that the learned Judges of the High Court were not justified at all in rejecting their evidence for the flimsy reasons mentioned by them We are also of the opinion that the learned trial Judge was absolutely justified in accepting the evidence of the prosecution witnesses and convicting the respondents for the offence of murder and that the learned Judges of the High Court had no justification whatsoever for reversing that judgment and acquitting the respondents This is not a case where two views on the evidence available on record are possible We therefore allow the appeal and set aside the judgment of the High Court and affirm that of the learned trial Judge convicting the respondents for the offence of murder of Jaleshwar Singh But though the case is of gruesome and cold blooded murder and the learned Sessions Judge was justified in awarding the sentence of death having regard to the fact that the occurrence took place over a decade ago we sentence the respondents to undergo imprisonment for life The bail bonds of the respondents who are on bail are cancelled and they shall be taken into custody forthwith for serving the remaining part of the sentences

Appeal allowed

1986 ALL L J 281

= AIR 1986 Supreme Court 287

(From Allahabad)*

D P MADON AND G L OZA JJ

Criminal Appeal No 761 of 1980 D 26 11 1985

Mst Zohara Khatoon Appellant v Mohd Ibrahim Respondent

Criminal P C (2 of 1974), S 125 — Maintenance — Muslim wife — Dissolution of marriage under Dissolution of Muslim Marriages Act 1939 — Maintenance can be granted to her under S 125 Criminal Misc Case No 822 of 1978, D/ 20-10-1978 (All), Reversed (Muslim Law — Wife — Maintenance) AIR 1985 SC 945 Foll

(Para 4)

Cases Referred	Chronological	Paras
AIR 1985 SC 945	1985 Cri LJ 875	4
AIR 1981 SC 1243	1981 Cri LJ 764	2 3

MADON, J — Both the parties are Muslims On January 15 1973 the Appellant obtained under the Dissolution of Muslim Marriages Act 1939 a decree of dissolution of her marriage with her husband the Respondent There was one issue born of the marriage of the Appellant with the Respondent namely a son On coming into force on April 1 1974 of the Code of Criminal Procedure 1973 the Appellant filed on September 17 1974 a petition under section 125 of the said Code for maintenance for herself and the child of the marriage The Respondent contended that the Appellant s marriage with the Respondent having been dissolved by a decree of dissolution by a civil court she was not entitled to any maintenance under the said section 125 This defence was rejected and the Special Judicial Magistrate Barabanki U P allowed the said application by his order dated December 29 1976 and directed the Respondent to pay a sum of Rs 100/ per month in all as maintenance both for the Appellant and the child holding that the Appellant had been neglected by the Respondent without reasonable or probable cause The order of the learned Magistrate was upheld by the Sessions Judge in revision Thereafter the Respondent approached the Lucknow Bench of the Allahabad High Court under section 482 of the Code of Criminal Procedure The High Court held that being a divorced wife she was not entitled to maintenance for herself and directed the Respondent to pay a sum of Rs 40 per month to the Appellant for the maintenance of the child

2 The Appellant thereupon obtained Special Leave to Appeal against the judgment and order of the High Court The Appeal reached hearing before a Division Bench of this Court consisting of S Murtaza Fazal Ali A D Koshal and A Varadarajan JJ and was heard ex parte as the Respondent did not appear On February 18 1981 (Reported in AIR 1981 SC 1243) S Murtaza Fazal Ali J delivered judgment on behalf of himself and Varadarajan J while A D Koshal J delivered a separate but concurring judgment allowing the Appeal All the learned Judges held that the Appellant was entitled to maintenance for herself and the child This Court accordingly set aside the order passed by the High Court and restored the order of the learned Magistrate Thereafter the Respondent made an application to set aside the judgment and order of this Court on the ground that the notice of lodgment of the Appeal had not been served on him This plea was accepted and the Court by its order dated September 24 1981 restored the Appeal to the file and further pending the Appeal directed the Respondent to pay to the Appellant maintenance in the sum of Rs 140 per month made up of Rs 100/ for the Appellant and Rs 40/ for the child with effect from September 17 1974 This Court further directed the Respondent to deposit within three months with the Joint Registrar (Lucknow Bench) of the Allahabad High Court the entire amount of maintenance The Joint Registrar (Lucknow Bench) of the High Court by his report dated January 12 1982 intimated to this Court that the Respondent had failed to deposit the amount as directed

3 This Appeal has now reached hearing before us In the judgments delivered on February 18 1981 (Reported in AIR 1981 SC 1243) the learned Judges considered the entire law on the subject and held that a Muslim wife whose marriage was dissolved by a decree of dissolution passed at her instance was entitled to maintenance under section 125 of the Code of Criminal Procedure The position in law so far as a divorced Muslim wife is concerned has now been settled by the judgment of a Constitution Bench of this Court in Mohd Ahmed Khan v Shah Bano Begum AIR 1985 SC 945

*Criminal Misc Case No 822 of 1978 D/ 20 10-1978 (All)

AD/AD/A 274/86/VNP

4 In view of these judgments there is no substance in the contention raised by the Respondent and this Appeal must succeed We accordingly allow this Appeal reverse the judgment and set aside the order of the High Court and direct the Respondent to pay to the Appellant a sum of Rs 140/ per month namely Rs 100/ as maintenance for the Appellant and Rs 40/ as maintenance for the child with effect from September 17 1974 We further direct the Respondent to pay to the Appellant the arrears of maintenance at the above rate within three months from today

5 On behalf of the Appellant it was urged that in view of the passage of time and the increased cost of living the amount of maintenance should be increased No materials however have been placed before us to show what the income of the Respondent is at present If the Appellant desires the amount of maintenance to be increased it will be open to her to apply to the concerned Magistrate under Section 127(1) of the Code of Criminal Procedure 1973 to increase the amount of maintenance

Appeal allowed

1986 ALL. L. J 282

A S SRIVASTAVA J

Raj Kumar and another Applicants v State of U P and another Opposite Parties

Misc Appln No Nil of 1985 in Criminal Misc Transfer Appln No 7752 of 1984 D/ 4-10-1985

Criminal P C (2 of 1974), Ss. 326, 228 — Recording of evidence — Mere framing of charge under S 228 does not amount to recording of evidence wholly or partly under S. 326 — Transfer of Judge to another court only after framing of charge — His jurisdiction in the case ceases.

Where a Judge had only framed a charge in the case and was subsequently transferred from that court to another court before recording any evidence in the case the Judge could not be said to be a Judge who had recorded any evidence within meaning of S 326 Consequently his jurisdiction in the case did not survive under the section merely because he had framed a charge in it and as such case could not be transferred to his court for trial (Para 9)

The words "after having heard and recorded whole or any part of the evidence" u/s 326 clearly indicate that the Judge or Magistrate contemplated in this section is that Judge or Magistrate who has recorded whole or any part of the evidence in the case When a Judge or Magistrate frames charge in a case under S 228 Cr P C he does not record any evidence in the case wholly or partly The Court proceeds with the trial of the case only when such a charge framed by it is read over and explained to the accused who after hearing the charge either refuses to plead or pleads not guilty to it and claims to be tried The purpose of the charge framed by a court is (a) only to tell the accused the matter with which he is charged (b) to convey to him what actually the prosecution intends to prove and (c) the matter which he will have to face at the trial Framing of charges does not therefore amount to recording of evidence in the trial which in fact follows after the charge is read over to the accused (Para 6)

Cases Referred Chronological Paras

1983 Cri LJ 205 1983 All WC 55 4 5 9 14

Keshav Sahai for Applicants A G A and R P Singh for Opposite Parties

ORDER — This is an application made by the accused of S T O 529/M of 1983 (State v Bacheha Pande and others) for the transfer of the case from the court of III Additional Sessions Judge Kanpur to that court in the district of which Sri O P Garg is now the Presiding Officer

2. On 24-4-1983 when charges were framed in this case Sri O P Garg was the Presiding Officer of the III Addl Sessions Judge Kanpur It was on this date that the applicants pleaded not guilty to the charge read over to them by Sri Garg No evidence was recorded on that date by Sri Garg who fixed another date for recording evidence in the case However before any evidence could be recorded in the case Sri Garg was transferred from that court to another court in the same Sessions Division The recording of evidence in the case was actually started on 25-7 1984 by the successor of Sri Garg who after recording the statement of only one witness Kalloo adjourned the case to 7-8-1984 for further evidence In the meantime the applicants filed the instant application before this Court for transfer of this case to the court of Sri O P Garg on the ground that the successor of Sri Garg has no jurisdiction to try this case

3 According to the applicants the

jurisdiction of Sri Garg in the case has not at all ceased as his transfer to another court in the same Sessions Division actually meant a change of his designations His jurisdiction in the case did not therefore cease on account of this change of designation It is only he who has jurisdiction in the case It should therefore be transferred to his court for further trial

4 The above contention of the applicant is based on a decision of Division Bench of this Court in Punjab Singh v State of U P 1983 All WC 55 (1983 Cri LJ 205)

5 After hearing counsel for both the sides and after going through the judgment of Punjab Singh s case (supra) I have no quarrel with the applicants counsel that it is always the right of the accused to claim that his case should be decided by a Judge who has heard and recorded evidence in his case unless his jurisdiction in the case has ceased There can also be no controversy with the decision of Punjab Singh s case that the jurisdiction of a Judge does not cease by mere change in his designation But as already observed in my order dated 14 9 1984 I find myself unable to agree with learned counsel for the applicants that the above two propositions are applicable to the facts of this case because I am of the opinion that in this case Sri Garg cannot be held to be a Judge who had heard and recorded any evidence in this case within the meaning of S 326 Cr P C It is only when a Judge or Magistrate has heard and recorded the whole or part of the evidence in a case that the case becomes part heard with that Judge or Magistrate and it is in such a case that his jurisdiction does not cease merely by a change in his designation Sri Garg had admittedly not recorded any evidence in this case He had only framed charges in this case and mere framing of charge does not amount to recording of evidence in the case There is absolutely no ambiguity in this regard in the section itself The relevant portion of Section 326(1) Cr P C reads as under —

Whenever any Judge or Magistrate after having heard and recorded the whole or any part of the evidence in an inquiry or a trial

6 The words after having heard and recorded whole or any part of the evidence" clearly indicate that the "Judge or Magistrate" contemplated in this Section is that the Judge or Magistrate who has recorded whole or any part of the evidence in the case When a Judge or Magistrate frames charge in a case under S 228 Cr P C he does not record any evidence" in the case wholly or partly I do not agree with Sri Keshav Sahai that the framing of charge under S 228 Cr P C is a part of the evidence contemplated under S 326 Cr P C In fact the recording of evidence in a case starts when the trial against an accused commences and the trial commences not with the framing of the charge but immediately after it There was no such controversy in the old Code in which the word trial" was defined as proceedings taken in court after a charge has been drawn up This definition of trial has been omitted in the new Code but this omission does not mean that the legislature intended to define it otherwise This omission by itself does not have the effect of defining trial as proceedings commencing not subsequent to the framing of the charge but along with it A charge against an accused is framed by a Court under S 228 Cr P C when the Court is after considering the material on the record and hearing the accused (as provided under S 227 Cr P C) is of the opinion that there is ground for presuming that the accused has committed an offence The Court proceeds with the trial of the case only when such a charge framed by it is read over and explained to the accused who after hearing the charge either refuses to plead or pleads not guilty to it and claims to be tried The purpose of the charge framed by a court is (a) only to tell the accused the matter with which he is charged (b) to convey to him what actually the prosecution intends to prove and (c) the matter which he will have to face at the trial Framing of charges does not therefore amount to recording of evidence in the trial which in fact follows after the charge is read over to the accused

7 This fact becomes further clear when Section 239 Cr P C is also examined in this connection This section reads as under

If the accused refuses to plead or does not plead or claims to be tried or is not convicted under S 229 the Judge shall fix a date for the examination of witnesses and may on the application of the prosecution issue any process for compelling the attendance of any witness or the production of any document or other thing"

8 It is clear from this section that the Court fixes a date for the examination of witnesses after the accused either refuses to plead or does not plead or pleads not guilty to the charge or he claims to be tried The words claims to be tried in this section further makes the intention of Legislature in this regard clear This Section provides for the fixing of a date for the examination of witnesses when the Court proceeds to try the accused after hearing the charge either refuses to plead or pleads not guilty and claims to be tried Now when such a date for examination of witnesses is to be fixed after the charge is framed and read over to the accused the charge itself cannot be treated a piece of evidence in the case Therefore mere framing of a charge cannot by any stretch of imagination be considered to be recording of evidence in the case as contemplated in Section 326 Cr P C

9 Examining the facts of this case in the above view of the matter I have no doubt that the jurisdiction of Sri Garg in the case does not survive under S 326 Cr P C merely because he had framed charge in it I will now advert to the decision in the Punjab Singh s case (1983 Cri LJ 205) (All) (supra) to examine whether it has laid down any such proposition on account of which a contrary view can be taken in this case Sri Keshav Sahai relied upon the observations contained in paragraph 21 of this judgment which reads as under

21 Two kinds of cases may be part heard with a Judge (i) where the Judge had framed only the charges but had not recorded evidence and (ii) where the Judge had heard and recorded evidence either wholly or in part and his jurisdiction has not ceased in the trial in the manner referred to above To the first category of cases section 326 in terms may not apply and the successor in-office of that Judge would not be entitled to continue the hearing of the case from the stage left over by his predecessor But at the same time the Judge who had commenced the proceedings (in the trial by recording evidence) and framed the charges being seized of the matter would be entitled to continue the proceedings since his jurisdiction to deal with it had not been terminated In the aforesaid second category the Judge would continue to exercise jurisdiction and will dispose it of according to law and in the light of the discussion above

10 If the above observations are clearly examined it will be clear that it has not been laid down in this case that where a Judge has framed only the charge in the case he shall be deemed to have recorded evidence in the case within the meaning of S 326 Cr P C and the successor in-office of that Judge will not therefore be entitled to continue with the hearing of that case In this para it has been pointed out that the following two kinds of cases be part heard with a Judge —

(i) Where a Judge had framed only the charge but had not recorded evidence and

(ii) Where the Judge had heard and recorded evidence either wholly or in part

11 To the first category of cases it has been clearly held in this case that

Section 326 in terms may not apply and successor in-office would not be entitled to continue the hearing of the case from the stage left over by his predecessor

12 It is with respect to the second category of case that it has held that the Judge is seized of the matter and his jurisdiction to deal with it had not been terminated In the second category of cases the Judge would continue to exercise jurisdiction

13 Undisputedly the case before us does not belong to the second category but it belongs to the first category Consequently it cannot be held that the jurisdiction of Shri Garg to proceed with the trial has not been terminated and he is still seized of the matter The case cannot therefore be transferred to his Court for trial

14 Shri Keshav Sahai has urged that the above decision of Punjab Singh s case (1983 Cri LJ 205) (All) (supra) applies to the first category also It is with this submission of Sri Keshav Sahai that I do not agree As already pointed out above the observations in the Punjab Singh s case with this category of case are S 326 in terms may not apply It clearly means that in this case it has not been affirmatively held that to this first category of cases S 326 Cr P C applies When this Section is not applicable to this category of cases the jurisdiction of the Judge or Magistrate who has only framed a charge in the case cannot be held to survive when he is transferred from that Court With his transfer he ceases to have

a jurisdiction in the case No doubt it has been observed in the Punjab Singh s case that in cases of this category where S 326 Cr P C does not apply the successor in-office of that Judge would not be entitled to continue the hearing of the case from the stage left over by his predecessor Obviously this observation speaks about the jurisdiction of the successor Judge to proceed in the trial from the stage left over by his predecessor or frame the charge again It will be for the successor Judge to take note of this observation while proceeding with the trial but it does not mean that this observation purports to hold that in such cases also where S 326 does not apply the predecessor Judge shall be deemed to be seized of the matter and his jurisdiction to proceed with the trial continues

15 Therefore I have no doubt in my mind that in this case the jurisdiction of Sri O P Garg to proceed with the trial continues (sic) or that he is still (sic) seized of the matter The prayer for the transfer of this case to his Court cannot be granted

16 The application is therefore dismissed The stay order if any is also vacated There is no order as to costs

Application dismissed

1986 ALL L J 285

= AIR 1985 Supreme Court 75

(From Allahabad)*

D A DESAI AND
RANGANATH MISRA JJ

Civil Appeal No 4041 of 1984 arising out of S L P No 16990 of 1983 D/ 24-9-1984

Hussaini Appellants v The Hon The Chief Justice of High Court of Judicature at Allahabad and others Respondents

Constitution of India, Art 136 — Safai Jamadar in High Court dismissed from service denying all retiral benefits — 20 years of service rendered by Jamadar at time of dismissal — Held, there was scope for taking lenient view — Order of dismissal converted into one of compulsory retirement to ensure him retiral benefits C M W P No 9279 of 1980 D/ 18-5 1981 (All), Partly reversed

(Paras 3, 5)

Mr J S Bali and Mr L R Singh Advocates for Appellant Mrs Shobha Dikshit Advocate for Respondents

JUDGMENT — Special leave granted

2 We heard Mr J S Bali learned counsel for the appellant and Mrs Shobha Dikshit learned counsel for the respondents Appellant who was serving as a Safai Jamadar was dismissed from service by the Registrar of the High Court of Judicature at Allahabad His Writ Petition having been dismissed he has filed this appeal by special leave

3 It appears that appellant joined service as a sweeper in the High Court on April 25 1966 By an order dated April 28 1978 he was placed under suspension and thereafter he was dismissed from service on November 30 1978 At the time of dismissal he had rendered service for over 20 years As appellant was dismissed from service he has been denied retiral benefits such as pension provident fund and gratuity to which he would be entitled if he is compulsorily retired from service as and by way of punishment We suggested to Mrs Shobha Dikshit learned counsel for the respondents to enquire whether any retiral or terminal benefit can be given to the appellant on the basis that he has rendered service for 20 years the response is positive However Mrs Shobha Dikshit learned counsel for the respondents pointed out that in law appellant would not be entitled to any retirement benefit in view of the fact that he is dismissed from service by way of punishment

4 Appellant was a low paid Safai Jamadar We do not propose to minimise the gravity of his misconduct for which the High Court thought fit to impose maximum punishment of dismissal from service simultaneously denying him all retiral benefits Without in any manner detracting from the view taken by the High Court we are of the opinion that there is some scope for taking a little lenient view in the matter of punishment awarded to the appellant The lenience if at all would render the post dismissal life of the low paid employee a little

---

*C M W P No 9279 of 1980 D/ 18 5-1981 (All)

KB/KB/F576/84/GDR

tolerable and keep him away from the penury and destitution

5. How much is the cushion or the elbow room in the matter of punishment? Appellant cannot be reinstated in service He must remain out of his last employment Therefore the only course open to us is to convert the order of punishment into one of compulsory retirement so that while denying service to the appellant he will be ensured retiral benefits

6. We accordingly allow the appeal convert the order of dismissal into one of compulsory retirement Consequently the respondent shall pay Rs 150/ p.m towards pension to the appellant from November 30 1978 The amount of pension is worked out by the respondents on a suggestion made by the Court The arrears of pension shall be paid within two months from today and the pension payment order shall be issued within the same time for drawing the pension regularly from month to month Provident fund and gratuity shall be paid if admissible to the appellant on the same computation The appeal is allowed to that extent only There will be no order as to costs

Appeal partly allowed

1986 ALL. L J 286

O P SAXENA AND B L YADAV JJ

Arun Kumar Singh Petitioner v Gorakhpur University and another Respondents

Civil Misc Writ Petn No 403 of 1985 D 15 2 1985

Constitution of India, Art. 226 — Admission to post-graduate course — Student filing a photostat copy of forged mark-sheet with admission form — Overwriting not explained by him in his subsequent application enclosing thereon and the true copy of mark-sheet without overwriting — Held if opportunity of hearing was not given before cancelling admission nothing unfair could be inferred therefrom. AIR 1978 SC 597, AIR 1978 SC 851 and AIR 1970 SC 1269 Rel. on. (Para 14)

Cases Referred	Chronological	Paras
AIR 1978 SC 597		11
AIR 1978 SC 851		12
AIR 1973 All 1 (FB)		9
AIR 1970 SC 1269		13
AIR 1969 SC 198		8
(1969) 3 All ER 275	(1969) 3 WLR 706	45
Tax Cas 540 (HL)	Wiseman v Borneman	7

Yatindra Singh for Petitioner Standing Counsel for Respondents

O P SAXENA, J — By this petition under Art 226 of the Constitution the petitioner has prayed for a writ of mandamus directing respondent 2 to admit him in M.Sc (Agricultural Botany) course for 1984-85

2 The petitioner applied to the Principal Sri Murli Manohar Town Post Graduate College Ballia for admission in M Sc (Agricultural Botany) course for 1984 85 He submitted a photostat copy of his marks-sheet of B Sc (Agriculture) According to the rules his merit index came to 54 21 The selection list is Annexure 1 to the writ petition there were 13 seats in the general category The petitioner was at serial No 13 of this list He was however not admitted On 22nd September 1984 the Committee decided to cancel the admission forms of three candidates including the petitioner for having submitted forged marks-sheet along with the admission forms

3 We have heard Sri Yatindra Singh learned counsel for the petitioner and Sri S N Srivastava learned counsel for respondent 2 The latter has produced before us the relevant file of the petitioner On the request of the counsel we are deciding the petition on merits at the admission stage

4 The petitioner s admission form has been cancelled on the ground that in the photostat copy of the marks-sheet submitted by him along with the admission form 28 marks were shown in Vth paper On 20th September 1984 the petitioner gave an application to the effect that he had in fact secured 18 marks and not 28 marks and filed another copy of the marks-sheet issued by respondent 2 There were two other candidates who had submitted forged marks-sheets along with the admission forms The Committee appointed by the Principal of Sri Murli Manohar Town Post Graduate College took serious view of the matter and decided to cancel the admission forms of all the three candidates

5 The petitioner had filed a photostat copy of the marks-sheet along with the admission form We enquired from the learned counsel if he could produce before us the marks-sheet of which a photostat copy was filed with the form The learned counsel informed us that the said marks-sheet was lost As the petitioner was required to submit a true copy of the marks-sheet at the time of admission he obtained another copy of the marks-sheet and filed the same along with his application dated 20th September 1984 This marks-sheet shows that he secured 18 marks and not 28 marks in Vth paper The photostat copy of the marks-sheet makes it highly probable that 1 of 18 was overwritten and changed to 2 to make it read as 28

6 In the application dated 20th September 1984 given by the petitioner there was no explanation of this overwriting The petitioner stated that another true copy of the marks sheets was being filed as there was mistake in the photostat copy of the marks-sheet filed earlier Who could be interested in filing a photostat copy of a forged marks-sheet? Who could forge the marks-sheet? The office of the Principal Sri Murli Manohar Town Post Graduate Colleges Ballia could not do the forgery on the true copy of marks-sheet There was overwhelming circumstantial evidence which pointed towards the guilt of the petitioner

7 The rule of fair play in action was stated in Wiseman v Borneman (1969) 3 All ER 275 as

The principles and procedures are to be applied which in any particular situation or set of circumstances are right just and fair

8. In the case of Suresh Koshy v University of Kerala AIR 1969 SC 198 it was held

The rules of natural justice are not embodied rules The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point the constitution of the Tribunal and the rules under which it functioned "

9 In the case of Trimbak Pati Tripathi v Board of High School and Intermediate Education U P Allahabad AIR 1973 All 1 (FB) it was held that there is thus neither any statutory requirement nor any requirement of principles of natural justice which compels the Examination Committee to give a personal hearing to the candidate

10 In Judicial Review of Administrative Action by A S de Smith 2nd Edition page 174 the learned author says

In the administrative law a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action specially action of pre-emptive or remedial nature

11 In Maneka Gandhi v Union of India AIR 1978 SC 597 at p 629 Bhagwati J referred to the exception as below —

There are certain well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by A S de Smith in Judicial Review of Administrative Action 2nd Edition at Pp 168 to 179 If we analyse these exceptions a little closely it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action The word exception is really a misnomer because in these exclusionary cases the audi alteram partem rule is held inapplicable not by way of an exception to fair play in action but because nothing unfair can be inferred by not affording an opportunity to present or meet a case The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice or to make the law lifeless absurd stultifying self-defeating or plainly contrary to the commonsense of the situation

12 In Mohinder Singh Gill v Chief Election Commissioner AIR 1978 SC 851 the rules of exclusion were considered and it was observed in para 48 p 892

"The exceptions to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case "

13 In Bihar School Examinations Board v Subhash Chandra Singh AIR 1970 SC 1269 there was use of unfair means by a vast majority of candidates at a centre The Board cancelled the whole examination The Supreme Court held that opportunity to represent their cases was not required to be given to all the candidates

14 In this case the petitioner had already given his version in his application dated 20th September 1984 The true copy of the marks sheet which was forged and of which photostat copy was filed with the admission form had been lost The petitioner obtained another true copy of the marks-sheet which shows that he had obtained 15 and not 28 marks in Vth paper It is apparent that the first digit of 2 in the true copy of the marks sheet was overwritten before the photostat copy was prepared Filing of a forged marks-sheet with the admission form is a serious matter It had to be put down by a firm hand Stern action was called for immediately It was already the third week of September and the next candidate in the waiting list had to be called upon to join The learned counsel for the petitioner did not make any submission explaining as to how overwriting on 2 of 28 was made in the true copy of the marks-sheet before getting a photostat copy prepared This is a case in which nothing unfair can be inferred by not affording an opportunity to present or meet a case

15 We are thus of the opinion that impugned order is not vitiated on account of failure to afford an opportunity to the petitioner as it is covered by the exception to the rule of audi alteram partem

16 The petition is dismissed with costs to respondent 2

Petition dismissed

1986 ALL L J 288

S D AGARWALA J

Sukhmal Chand Jain Applicant v Suraj Bhan Opposite Party

Civil Revn No 3 of 1985 D 27 9 1985 *

(A) Provincial Small Cause Courts Act (9 of 1887), S 25 — U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (1972), S 20 — Suit for eviction — Rate of rent — Finding as to — Documentary evidence as to rate of rent on record — Conclusion as to rate of rent based on appreciation of evidence — It is finding of fact — Conclusion cannot be said to be erroneous. (Para 6)

(B) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 20(4) Explanation (as added by Amendment Act (U P Act 28 of 1976)) — Applicability — Benefit under S 20(4) — Failure of tenant to deposit arrears of rent on date mentioned in summons — Tenant is not entitled to benefit under S 20(4) — Explanation coming into force after filing of suit — Immaterial — Explanation introduced by the Amendment Act applies to suits which have been filed before coming into force of the Amendment Hence, where the tenant did not deposit the arrears of rent on the date mentioned in the summons which was subsequent to the coming into force of the Amendment Act, the tenant was not entitled to benefit of S 20(4) (Para 12)

If the tenant wanted to take the benefit of S 20(4) he had to deposit the amount in accordance with law that was applicable on the date when he was required to deposit the amount If the tenant wanted to relieve himself of the liability of eviction on the ground of default he had to deposit the amount on that date as per the Explanation added to S 20(4) by Amending Act 1976 The mere fact that the suit had been filed earlier cannot take away the effect of the beneficent provisions added by the Amending Act If the statute

---

*Against judgment and order of Dist Judge Meerut in Original Suit No 21 of 1976 D/ 10-12 1984

---

confers a concession or a privilege and prescribes the mode of acquiring it the mode so prescribed must be adopted as even affirmative words in such cases are construed imperative (Para 13)

Cases Referred Chronological Paras

1984 All LJ 1106 (1984) 1 All Rent Cas 410 (FB) 11 12

Sri Dhan Prakash for Applicant A K Yog for Opposite Party

ORDER — This is a revision under S 25 of Small Cause Courts Act Suit No 21 of 1976 was filed by the opposite party Suraj Bhan against the revisionist in the Court of Judge Small Cause at Meerut for eviction of the revisionist from the accommodation in dispute and for recovery of arrears of rent and damages for use and occupation at the rate of Rs 300/ per mensem from 1th Oct 1975 The case of the plaintiff opposite party is that the revisionist has been his tenant at the rate of Rs 300/ per mensem He demanded arrears of rent through a notice dated 23 3-1976 and also terminated his tenancy but in spite of the notice neither the revisionist paid the arrears of rent nor vacated the accommodation and hence the necessity arose for filing the suit out of which the present revision arises

2 The defence of the revisionist was that in fact the rate of rent was Rs 100/ per mensem He asserted however that the rent note was got executed at the rate of Rs 300/ per mensem so that the plaintiff-opposite party could get the shop vacated from the revisionist at any time under the pressure of payment of higher rent During the pendency of the suit since the revisionist did not comply with the provisions of O XV R 5 of Civil P C and he did not deposit the rent his defence was struck off on 1 12 1976 Against the order dated 1 12 1976 striking off the defence revision was filed in this Court This revision was allowed by this court on 10th April 1979 setting aside the order striking off the defence and a further direction was issued that the suit be disposed of in accordance with law

3 After remand by this court the matter was again examined by the trial court and ultimately the suit was decreed on 10th Dec 1984 It is this order dated 10th Dec 1984 which has been impugned in the present revision

4 I have heard the learned counsel for the parties

5 Learned counsel for the petitioner has contended that —

(1) the finding recorded by the court below that the rate of rent is Rs 300 per mensem is manifestly erroneous

(2) the revisionist is entitled to the benefit of S 20(4) of U P Act 13 of 1972 and the finding to the contrary is erroneous

(3) the explanation to S 20(4) added by U P Urban Buildings (Regulation of Letting Rent and Eviction) Act (Amendment Act 1976) U P Act 28 of 1976 is not applicable to the case of the revisionist

6 In so far as the first contention of the learned counsel is concerned the court below has examined the entire documentary evidence on record and thereafter came to the conclusion that the rate of rent was Rs 300/ per mensem The case set up by the revisionist that the rate of rent was Rs 100/ per mensem only was not accepted by the court below From the reasons given by the court below it is clear that there was documentary evidence to establish that the rate of rent was Rs 300/ per mensem It cannot be said that the finding recorded by the court below in this regard is in any manner manifestly erroneous In fact it is based on appreciation of evidence on the record and after examining the evidence of both sides the court below came to the conclusion that the rate of rent was Rs 300/ per mensem This clearly is a finding of fact based on appreciation of evidence In the circumstances the contention raised by the revisionist challenging the finding in regard to the rate of rent is in my opinion without substance

7 So far as the second and third contentions of the learned counsel are concerned I shall consider both these contentions together

8 Section 20 sub-cl (4) of U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 hereinafter referred to as the Act provides that in any suit for eviction on the ground mentioned in cl (a) of sub s

if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in court the entire amount of rent and damages for use and occupation of the building due from him together with interest thereon at the rate of 9% per annum and the landlord s costs of the suit the court may in lieu of passing a decree for eviction on the ground of default pass an order relieving the tenant against his liability for eviction on that ground Sub-sec (4) of S 20 of the Act is a beneficent provision giving the benefit to the tenant of being relieved of eviction on the ground of default even though so far as the landlord is concerned a ground of eviction is made out under cl (a) to sub-s (2) An Explanation was added to S 20 sub-sl (4) of the Act defining as to what meaning could be given to the words 'first hearing of the suit By the U P Act 28 of 1976 hereinafter referred to as the Amending Act the following explanation was added

Explanation – For the purposes of this sub-section

(a) the expression 'first hearing means the first date for any step or proceeding mentioned in the summons served on the defendant

(b) the expression cost of the suit includes one half of the amount of the counsel s fee taxable for the contested suit

9 This Amending Act received the assent of the President on July 1 1976 and was published in the U P Gazette on 5th of July 1976

10 In the instant case it is not disputed that the date of hearing fixed in the summons which was served on the defendant was 16th July 1976 On this date an application was moved by the counsel for the revisionist stating therein that the abovementioned date has been fixed as the date of hearing but since he has been engaged as a counsel for the first time on that date he could not prepare the written statement on account of heavy work and hence he prayed that another date of hearing be fixed The court accordingly allowed time till 20th Aug 1976 for filing the written statement and fixed 28th Aug 1976 for hearing of the case On 20th Aug 1976 written statement was filed but on 28th Aug 1976 when the case was listed for hearing another application was moved for adjournment of the hearing on the ground that the witnesses whom the defendant had summoned had not come on account of their personal work and hence some other date be fixed The court then fixed 22 9 1976 for the hearing On 22 9 1976 as the Presiding Officer was on leave 1 12 1976 was fixed for hearing Whether the counsel was ready to argue the case or not was not relevant at all for determining as to whether the revisionist was entitled to the benefit of S 20(4) of the Act In the suit summons had been served on the revisionist and the Explanation to S 20 sub-sec (4) added by the Amending Act had already come into effect on 16th July 1976 which was the date fixed for hearing of the case Admittedly on 16th July 1976 the petitioner did not deposit the rent and damages as required by S 20(4) of the Act Since the revisionist did not deposit the amount on that date he is not entitled to the benefit of S 20(4) of the Act

11 In Siaram v District Judge Kheri (1984) 1 All Rent Cas 410 (1984 All LJ 1106) a Full Bench of this court had an occasion to consider the effect of the Explanation added by the Amending Act It was categorically held by the Full Court that whatever be the decision of the courts earlier than the coming into force of the Amending Act a person would be a defaulter if the amount had not been deposited in terms of the Explanation added by the Amending Act It opined as follows –

'The provisions of S 20(4) are by way of providing locus paenitentiae for a tenant who has been a defaulter and has thus forfeited the protection of the rent control law It gives him a further opportunity to redeem his position which has the effect of depriving the landlord of the right that has accrued to him as a result of the earlier default of the tenant The Legislature cannot therefore be said to have acted unreasonably in requiring the tenant to comply with the provisions of S 20(4) more strictly than with the provisions of O XV R 5 Civil P C

12. In view of the principles laid down in the case of Siaram (supra) it is clear that the revisionist did not deposit the amount as required under sub-sec (4) of S 20 of the Act

in accordance with the Explanation added to the said sub-section by the Amending act and as such the revisionist is not entitled to the benefit of S 20(4) of the Act

13 The argument of the learned counsel for the petitioner that the Explanation added by the Amending Act was not applicable is based on the hypothesis that this Explanation is not retrospective but prospective His argument is that since the suit had been filed earlier therefore to such a suit this Explanation added by the Amending Act did not apply In my opinion this argument is wholly fallacious With the coming of the Amending Act if a tenant wanted to take the benefit of S 20(4) of the Act he had to deposit the amount in accordance with law that was applicable on the date when he was required to deposit the amount On 16th July 1976 when the date for hearing of the suit was fixed in the summons the Explanation was fully applicable If the tenant wanted to relieve himself of the liability of eviction on the ground of default he had to deposit the amount on that date The amount had to be deposited after coming into force of the Act The question of retrospectivity is wholly irrelevant The mere fact that the suit had been filed earlier cannot take away the effect of the beneficent provisions added by the Amending Act If the statute confers a concession or a privilege and prescribes the mode of acquiring it the mode so prescribed must be adopted as even affirmative words in such cases are construed imperative

14 Explanation to S 20(4) of the Act inserted by Amending Act of 1976 applies to suits which have been filed before the coming into force of the amendment In (Sic) third contentions raised by the learned counsel for the petitioner

15 In the result the revision fails and is accordingly dismissed but in the circumstances of the case the parties are directed to bear their own costs

Revision dismissed

1986 ALL L J 291

R. M SAHAI J

Raj Kumar Petitioner v Assistant Sugar Commissioner and Appellate Authority under U P Sugarcane (Purchase Tax) Act 1961 Moradabad and another Respondents

Civil Misc. Writ Petn. No 784 of 1981 D/ 23-9-1985

U.P Sugarcane (Purchase Tax) Act (9 of 1961), S. 3(1-b) — Exercise of option — Option exercised in prescribed form — Date of start of unit intimated by separate letter — Option not vitiated.

Where the owner of a unit has exercised option in Form XIII and intimated about the start of unit by a separate letter that by itself does not render the option invalid. (Para 4)

The Proviso to S 3(1) makes it clear that the specification of the date in the sub-rule is not final It can be altered depending on the exigency of situation The absence of date of start of unit in form XIII therefore, could not render the option futile (Para 4)

K M Sinha, for Petitioner Standing Counsel, for Respondents

ORDER — In this petition directed against orders passed by Assistant Sugar Commissioner (Appellate Authority) under U P Sugarcane (Purchase Tax) Act, 1961 and Khandsari Inspector and assessing authority the question that arises for consideration is whether in facts and circumstances of the case it can be said that petitioner had not complied with the provisions of proviso to S 3 of U P Sugarcane (Purchase Tax) Act, 1961 (hereinafter referred as Act) read with Rule 13-A.

2 Basic facts as they emerge out of affidavits filed by both parties are that for assessment year 1978-79 petitioner exercised its option in August, 1978 to be assessed on assumed basis as provided by first proviso to S 3 of the Act. The option was exercised in form XIII By letter dt. 1st Jan 1979 petitioner further informed the assessing authority that he shall start his unit from 10th Jan. 1979 It

was received in office of assessing authority on 4th January 1979 Since 10th January onwards the petitioner paid advance tax as provided in R 13(3) at the rate of Rs 11-20 per month except that it reduced the amount proportionately for month of January the month in which unit was started and April when the unit was closed on 9th. The license was also renewed for 1979-80 In January 1981 petitioner received an order of Assessing Officer requiring petitioner to pay Rs 24 824/ over and above the payment that had already been made in 1978 79 This amount was demanded as in audit objection it was pointed out that option exercised by petitioner having not mentioned the date from which unit was to start functioning it was not in accordance with rule 13-A(1) Therefore, he was liable to pay tax on actual purchases made by it. No notice appears to have been given to petitioner before issing this demand The appellate authority noticed the argument advanced on behalf of petitioner But by a cryptic order without disclosing any reason dismissed it by saying that he did not find any error in assessment order

3 That the order of appellate authority is liable to be quashed for being bad admits of no doubt Nor can the order of assessing authority be maintained it having raised demand without giving any notice to petitioner But this would result in direction to decide these proceedings afresh That however is not necessary as even assuming whatever has been stated in counter affidavit and the order of assessing authority the orders are manifestly erroneous in law It may be mentioned that in the counter affidavit it was stated that intimation sent by petitioner that it was going to start its unit sent on 1st January 1979 was received on 4th January 1979 but since before this date the application sent by petitioner exercising option to be assessed on assumed basis had been rejected being contrary to rules the petitioner could not claim any right on it As it appeared to be very vital the learned standing counsel was granted time to file supplementary affidavit disclosing the exact date on which application for exercise of option to be assessed on assumed basis in Form XIII was rejected And to great astonishment it has been averred that it was rejected in 1981 by the same order by which impugned demand was created How can government official afford to file such irresponsible affidavit on basis of record on crucial (matter) leaves one amazed It is expected that department shall take notice of it and instruct its officials to be more vigilant and careful as this Court places great reliance on affidavit filed on behalf of State

4 Proviso to S 3 of the Act permits a unit to pay tax on the quantity of sugarcane actually purchased or assumed to have been purchased. Sub-sec (1 b) further provides that option should be exercised by such date in such form as may be prescribed and shall relate to whole of assessment year In pursuance of this sub-section R 13A has been framed giving in detail the time and manner in which option should be exercised. Sub r 1 provides for exercising option by way of declaration in Form XIII so as to reach the Sugar Commissioner and the Assessing Officer under registered cover on or before 31st January of each year or 15 days before the start of the unit whichever is earlier It further requires an owner to specify the date from which he decided to start the unit The two provisos to this sub-rule are significant They visualise situation where owner decides to start the unit from any day earlier or subsequent to the date specified in the sub-rule then he shall intimate in writing one week before he decides to start unit or from the date specified. These provisos therefore make it clear that specification of date in the sub-rule is not final. It can be altered depending on exigency of situation The absence of date of start of unit in form XIII therefore could not render the option futile or inoperative Apart from it R 13(3) requires owner of a unit exercising option to pay tax by 25th day of the month immediately preceding the month for which the tax is due It is not disputed that petitioner deposited advance tax as required by this rule and it was accepted by assessing authority Further the assessing officer never disputed it nor it intimated owner under R 15(2) about any other amount to be payable in addition to what petitioner paid as advance tax The claim of petitioner therefore that the option exercised by him was not accepted but acted upon appears to be well founded In this view of the matter it is not necessary to examine if audit report could furnish material for rejecting option exercised for 1978-79 in 1981 In fact the purpose of specifying date for start of unit

is to inform authorities before hand the date from which the liability to pay tax arises If no date was mentioned in Form XIII it could not render option invalid It could not permit owner to start the unit There is no report or material disclosed either before the authorities or before this Court which may establish that the unit was started prior to 10th January There is no bar for intimating the date by a separate intimation As pointed out earlier the proviso supports this Therefore if petitioner exercised option in Form XIII and intimated about start of unit by a separate letter that by itself did not render the option invalid

5 In the result this petition succeeds and is allowed. Orders passed by opposite parties 1 and 2 are quashed. Petitioner shall be entitled to its costs

Petition allowed

1986 ALL. L. J 293

K P SINGH J

Gaon Sabha Petitioner v Deputy Director of Consolidation Allahabad and others Respondents

Civil Misc Writ Petn No 44 of 1978 D/ 18 9 1985

(A) Constitution of India, Art 226 — U P Gaon Sabha and Bhumi Prabandhak Sumin Manual Paras, 128, 131 — Writ petition — Maintainability — Non-compliance of provisions of Paras 128, 131 — Not fatal to the presentation of the writ petition 1965 All LJ 858, Rel on (Paras 5, 6)

(B) U P Consolidation of Holdings Act (5 of 1954), S 48 — Constitution of India, Art. 226 — Writ petition against judgment of revisional authority under Consolidation Act — Parties — Revisional authority disposing of number of revisions by one judgment — Subject matter of dispute in writ petition arising out of revision between A and 'B — B cannot challenge maintainability of petition filed against him by A on ground that A has not impleaded other persons who were before the revisional Court (Paras 9, 10)

(C) Constitution of India, Art 226 — Writ petition against judgment of revisional authority under U P Consolidation Act — Maintainability (U P Consolidation of Holdings Act (5 of 1954), S 48.)

Appellate authority under the Consolidation Act decided the dispute against the petitioner ex parte on 13-12 1974 Revision against this o der was dismissed on 8 10-1976 During the pendency of the revision petition petitioner moved an application for setting aside the ex parte appellate order dt 13-12 1974 on 20-2 1976 Denotification of the village under S 52 of the U P Consolidation of Holdings Act took place on 12 2 1975 The appellate authority dismissed the application for setting aside the ex parte order dated 13 12 1974 through its order dated 7 12 1976 Against this order the petitioner preferred revision petitions which have been dismissed through the order dated 23-9 1977 Petitioner challenged the orders of appellate authority and revisional Court by a writ petition It was alleged that the order of the appellate authority dated 31 12 1974 has been confirmed by the revisional court through its order dated 8 10 1976 on the ground that the revision petition was not maintainable therefore, the order of the appellate authority dated 31 12 1974 had merged in the order of the revisional court dated 8 10-1976 And as the order did not suffer from any error of law the writ petition should be dismissed.

Held that the order of the revisional court dated 8-10-1976 is to the effect that the revision petition was not maintainable due to the circumstance that de-notification of the village under S 52 of U P C H Act had taken place therefore there was no decision of the revisional court on merit of the claim put forward before it Since there was no adjudication of the claims of the parties by the revisional court, no question of merger of the appellate order in the order of the revisional court arises The revisional court in its order dated 23-9-1977 has patently erred in holding that the order dated 8 10 1976 would be final between the parties (Para 13)

Held further that since the revisional court has not dealt with the merits of the restoration application its order suffered from patent error of law and deserved to be quashed. Order dated 8 10 1976 could not work as an

---

LC/AD/G851/85/AAJ/SNV

impediment in the way of the revisional court to decide the claims of the petitioner regarding the application for setting aside the ex parte order dated 31 12 1974 Case law discussed.

(Para 13)

Cases Referred	Chronological	Paras
1981 UPLT NOC 207	1981 Rev Dec 307	15
1980 UPLT NOC 160	1981 Rev Dec 1	7
1979 All CJ 212	(1980) 1 Rev CJ 97	12
AIR 1977 Cal 372		12
AIR 1973 All 411		14
AIR 1973 All 414		14
AIR 1967 Bom 310		11
1965 All LJ 858	1965 Rev Dec 349	5
AIR 1954 Madhya Bharat 4		11
AIR 1945 All 352		12
AIR 1934 All 134		11
AIR 1929 Oudh 35 (1)		11
AIR 1924 Cal 830		12
AIR 1921 Oudh 141		11
AIR 1915 All 2		11

Mrs. S R. Singh, for Petitioner R A. Yadav Rama Kant Tewari D S Misra, Standing Counsel, for Respondents.

ORDER — Shorn of unnecessary details brief facts giving rise to the present writ petition are that the appellate authority decided the dispute against the petitioner ex parte on 13-12 1974 Against the aforesaid order revision petitions were filed and they were dismissed by the revisional court through its order dated 8 10-1976 as is evident from Annexure A 3 attached with the writ petition. During the pendency of the revision petitions it appears that the petitioner had moved an application for setting aside the ex parte appellate order dated 13-12 1974 on 20-2 1976 De-notification of the village under S 52 U P Consolidation of Holdings Act took place on 12 2 1975 The appellate authority dismissed the application for setting aside the ex parte order dated 13-12 1974 through its order dated 7 12 1976 Against this order the petitioner preferred revision petitions which have been dismissed through the order dated 23-9-1977 Aggrieved by the orders of the appellate authority and the revisional court the petitioner had approached this Court under Art. 226 of the Constitution. The writ petition was allowed by me on 3-8-1983 but that order was recalled because there was no proper service upon the contesting opposite party in the writ petition. Now the counsel for the parties have been heard

2. The learned counsel for the petitioner adopted the reasonings in my judgment dated 3-8 1983 and has contended that the impugned judgments of the appellate authority and the revisional court deserve to be quashed.

3 The learned counsel for the contesting opposite party has submitted in reply that when the order dated 3-8 1983 has been recalled, it should not be looked into and the case should be decided ignoring the reasonings in that judgment According to the learned counsel for the contesting opposite party the writ petition is not maintainable He has stressed that by the impugned judgment of the revisional court a number of revision petitions were dealt with and all the parties, who were before the revisional court, have not been impleaded in the present writ petition therefore, the writ petition is not maintainable. Second submission made on behalf of the contesting opposite party is to the effect that the appellate order dated 13-12 74 had merged in the order dated 8 10-1976 passed by the revisional court therefore the impugned judgments do not suffer from patent errors of law and the writ petition deserves to be dismissed. Third submission on behalf of the contesting opposite party is to the effect that the writ petition is not maintainable because the provisions of paras 128 and 131 U.P Gaon Sabha and Bhumi Prabandhak Samiti Manual, had not been complied with nor the counsel for the petitioner were duly authorised by the Land Management Committee therefore, the writ petition should be dismissed.

4. I have considered the contentions raised on behalf of the parties. I am unable to accept the contentions of the learned counsel for the contesting opposite party that the writ petition is not maintainable for non compliance of the provisions of paras 128 and 131 U P Gaon Sabha and Bhumi Prabandhak Samiti Manual.

5. A learned single Judge of this Court in 1965 Rev Dec 349 (1965 All LJ 858) Land Management Committee Naini Patti v Board of Revenue, U P Allahabad had indicated that

Para 131 Gaon Samaj Manual is only a direction given by the State Government to

the land Management Committee and had not the force of Statutory law Non compliance of it cannot be considered to be fatal to the presentation of the writ petition or the appointment of a private Counsel for the Land Management Committee The High Court will not go into the question when there is no legal prohibition in the Act or the Rules made in this respect for engaging a private counsel for the conduct of litigation on behalf of the Gaon Samaj so far as the High Court is concerned

Therefore, I think that the contention of the learned counsel for the contesting opposite party has no force as regards non maintainability of the writ petition due to non compliance of para 131 Gaon Samaj Manual

6. So far as the non compliance of para 128 Gaon Samaj Manual, is concerned I think that the petitioner is sponsoring the cause of general public and there is a resolution authorising Sri Sagar Ram Pradhan to do parvo in the writ petition 44 of 1978 (see Annexure 2 attached with the rejoinder affidavit) The writ petition cannot be dismissed on the ground that the provisions of para 128 Gaon Samaj Manual had not been complied with To my mind substantial compliance has been made and the writ petition does not deserve to be thrown out on that ground

7 In 1981 Rev Dec 1 (1980 UPLT NOC 160) Gaon Sabha v Ram Karan Singh a learned single Judge of this Court at page 7 column 1 para 1 has observed that —

The discussion made above would show that neither was a resolution of the Gaon Sabha required for filing the appeal nor was any written authority needed to do so From the language employed in para 128 Gaon Samaj Manual it appears to me that it would not otherwise apply to an appeal which is filed on behalf of the Gaon Sabha in this Court."

8. To my mind the above observation applies with greater force in the case of the writ petition before this Court Hence I repel the contention of the learned counsel for the contesting opposite party that the writ petition should be dismissed for non compliance of paras 128 and 131 Gaon Samaj Manual

9 The first submission of the learned counsel for the contesting opposite party that the writ petition is not maintainable in view of the circumstances that the petitioner has not impleaded the other persons who were before the revisional court in different revision petitions I think that this contention has also no force in the circumstances of the present case The subject matter of the dispute in the present writ petition is between the petitioner and the contesting opposite party Ganesh

10. The learned counsel for the petitioner has emphasised that the claim of the parties can be decided by the revisional court even if the other parties in the different revision petitions are not before the revisional court Since the cases before the revisional court were separate revision petitions, I am not prima facie satisfied with the submission of the learned counsel for the contesting opposite party that the present writ petition is defective and cannot proceed in the absence of other persons in different revision petitions before the revisional court However the revisional court would be at liberty to deal with the claim of the contesting opposite party Ganesh on this score when it is called upon to determine the claims of the parties in the present writ petition If the equities between the parties in revision petitions 606 and 209 of Gaon Sabha v Ganesh, cannot be determined in the absence of the other parties in different revision petitions the revisional court may not grant relief to the petitioner Gaon Sabha, but it would not be proper to dismiss the present writ petition for non impleadment of persons in different revision petitions specially when the case giving rise to the present writ petition is separate one before the revisional court In view of the aforesaid discussions the first contention raised on behalf of the contesting opposite party fails

11 Now as regards the second contention the learned counsel for the contesting opposite party has placed reliance upon a large number of rulings such as AIR 1915 All 2, Mathura Prasad v Ram Charan Lal AIR 1934 All 134 Gauri Shankar Bhargava v Jagat Narain Shahgal AIR 1921 Oudh 141 Mahabali Parshad v Balbhaddar Singh AIR 1929 Oudh 35 Girdhari Lal v Dy Commr Gonda AIR 1954 Madhya Bharat 4 Balbhim Rao v Alakh Murari Lal AIR 1967 Bom 310 Kantilal Khobabhai Patel v Chiba Bava Bhandari. On this count the main grievance of the learned counsel for the opposite party is that the order

of the appellate authority dated 31 12 1974 has been confirmed by the revisional court through its order dated 8-10-1976 on the ground that the revision petition was not maintainable, therefore the order of the appellate authority dated 31 12 1974 had merged in the order of the revisional court dated 8 10-1976 It has been contended that the appellate authority and the revisional court were fully justified in dismissing the restoration application because the revision against the ex parte order had already been dismissed The learned counsel for the contesting opposite party emphasised the theory of merger and pointed out that the impugned orders do not suffer from any error of law therefore the writ petition should be dismissed

12. The learned counsel for the petitioner has invited my attention to the rulings reported in AIR 1924 Cal 830 Kalimuddin Ahamad v Esabakuddin AIR 1949 All 342 Ram Rakhan v Govind Das AIR 1977 Cal 372 Mira Ram Dey v Namita Goswami 1979 All CJ 212 Dr Charan Singh v District Judge Bareilly and has contended that the theory of merger of the appellate order in the order of the revisional court dated 8 10-1976 would not be applicable to the facts and circumstances of the present case

13 I have gone through the rulings cited by the counsel for the parties It is not necessary to deal with them In the present case the order of the revisional court dated 8 10-1976 is to the effect that the revision petition was not maintainable due to the circumstance that de-notification of the village under S 52 of U P C H Act had taken place therefore there is no decision of the revisional court on merit of the claim put forward before it Since there is no adjudication of the claims of the parties by the revisional court, no question of merger of the appellate order in the order of the revisional court arises in the circumstances of this case The revisional court in its order dated 23-9-1977 has patently erred in holding that the order dated 8-10-1976 would be final between the parties. It has failed to appreciate that the scope of the revision decided on 8 10 76 was quite different from the scope of the revision being dealt with in the impugned order The revisional court has not indicated in the impugned order as to whether the petitioner was entitled to condonation of delay in preferring the restoration application Since the revisional court has not dealt with the merits of the restoration application I think its order suffers from patent error of law and deserves to be quashed

14 It is also noteworthy that the order dated 8 10-76 is not in consonance with the decision of this Court reported in AIR 1973 All 411 Dilawar Singh v Gram Samaj and AIR 1973 All 414 Ram Bahadur v Dy Director of Consolidation However that order has not been challenged by the petitioner within reasonable time therefore it would not be proper to quash that order in the present writ petition Even erroneous decision would be final between the parties but in the present case the order dated 8 10 1976 would be construed as no revision lay against the order of the appellate authority dated 31 12 1974 The question involved in that revision petition was about the merits of the ex parte order but in the revision petition giving rise to the present writ petition the controversy centres round whether there exists sufficient cause for the absence of the petitioner on 31 12 1974 and whether the petitioner is entitled to condonation of delay in preferring the restoration application Therefore the scope of the revision petition giving rise to the present writ petition is different from the scope of the revision petition dealt with by the revisional court through its order dated 8 10 1976 In my opinion the order dated 8 10 1976 cannot work as an impediment in the way of the revisional court to decide the claims of the petitioner regarding the application for setting aside the ex parte order dated 31 12 1974

15 In the result the writ petition succeeds in part and the impugned judgment of the revisional court dated 23 9-1977 is hereby quashed and the revisional court is directed to re-examine the claims of the petitioner regarding setting aside the ex parte order dated 31 12 1974 in the light of the observations made above The observations made in the ruling reported in 1981 Rev Dec 307 (1981 UPLT NOC 207) Shyam Narain Rai v Dy Director of Consolidation Ballia would also be taken note of In the circumstances of the case the parties shall bear their own costs

Petition partly allowed

1986 ALL. L. J 297

A. N. VARMA, J.

Hari Shankar Applicant v. Vijay Kumar Rastogi and others Opposite Parties

Civil Revn. No. 747 of 1984 D/ 29.8.1984 *

(A) Civil P.C. (5 of 1908), O. 23, R. 3 and Explanation (as added by Allahabad High Court) — Compromise — Validity — Parties reaching settlement — Court recording joint statement of parties and passing order in terms of settlement — One of the parties not signing order — It is not vitiated

Order 23 R. 3 no doubt provides that an agreement or compromise has to be in writing and signed by the parties. Where therefore the parties submit before the court an agreement or compromise for an order that the same be recorded and a decree be passed in terms thereof it is certainly to be in writing and signed by the parties. But the Explanation added by the Allahabad High Court to O. 23 R. 3 does away with this requirement by necessary implication. The explanation equates the agreement and compromise with the statement of the parties concerned or their Counsel as recorded by the Court and the expression instrument with the statement of the plaintiff or his Counsel recorded by the Court. It is apparent that the provision in the Explanation substituting a joint statement of the parties for agreement and compromise necessarily obviates the requirement under R. 3 of O. 23 of the agreement or compromise to be in writing signed by the parties.

(Para 8)

Where the Court recorded the joint statement of the parties on their reaching a settlement and passed an order the order would not be vitiated merely because one of the parties did not sign below the order recording the joint statement of the parties.

(Para 9)

(B) Civil P.C. (5 of 1908), O. 23, R. 2, Explanation (as added by Allahabad High Court) and S. 115 — Parties entering into compromise — Court recording joint statement of parties as regards settlement — Party challenging order recording statement in revision, not challenging its correctness before Court nor in grounds of revision — High Court will assume that statement was correctly recorded — Order of Court appointing receiver in terms of power conferred under settlement not interfered.

(Para 14)

(C) Civil P.C. (5 of 1908), O. 23, R. 3 Explanation (as added by Allahabad High Court) and S. 115 — Compromise between parties — Court appointing interim receiver as per authority given to it under compromise — Revision — One party alone taking objection that compromise was not in accordance with the scheme of administration of trust — Parties having reached settlement for disposal of suit in a particular manner as recorded by court such kind of objection would not be entertained at the instance of lone individual in revision.

(Para 14)

B. D. Mandhyan, Vinod Sinha and S. C. Mandhyan for Applicant; R. N. Shukla, R. P. Goyal and P. K. Singhal for Opposite Parties.

ORDER — This revision is directed against an order dated November 30, 1984 passed by the learned District Judge, Rampur appointing one Sri Mukesh Kumar Jain as an interim receiver to discharge the functions of the Board of Trustees of a trust in regard to which a suit No. 42 of 1984 was filed by the opposite parties Nos. 1 to 4 for the removal of the applicant who was arrayed as defendant No. 2 in the suit as well as Amrish Kumar the opposite party No. 6 herein (defendant No. 3 in the suit) and Ram Chandra, the opposite party No. 7 (defendant No. 4 in the suit) as trustees as well as for a direction that their vacancies be filled up either by election or by nomination or in any other manner which the court might deem fit and proper.

2. During the pendency of the above suit an application was moved for appointment of a receiver. While this application was pending the parties are alleged to have entered into a compromise recorded by the Court below whereby this suit as well as two other suits were agreed to be disposed of in terms of the statement made by either the parties themselves or their counsel. One of the terms of the compromise reached between the parties was that till new trustees are elected the court may appoint a receiver to discharge the functions of the Board of Trustees which was to stand suspended from the date of appointment of the

*Against judgment of R. C. Awasthy, Dist. Judge, Rampur D/ 30.11.1984

receiver It is in pursuance of this alleged compromise that the impugned order has been passed by the court below appointing Sri Mukesh Kumar Jain as an interim receiver

3. It is significant that the order appointing interim receiver is being challenged only by Hari Shanker and by no other party to the suit or the other trustees who were arrayed therein as defendants

4. Sri B D Mandhyan learned counsel for the applicant challenged the impugned order mainly on the ground that the compromise or agreement on the basis of which the court below has passed the impugned order was itself not validly recorded or concluded. The formalities contemplated under O 23 R 3 of the Civil P C were not complied with in the present case and consequently it was not binding on the applicant. It was urged that in order that a compromise may be binding on the parties it must be in writing and signed by them In the present case, the applicant who was a party to the suit had admittedly not signed the agreement and consequently the agreement could not be held to be binding on the applicant. That being so it was urged, the court below could not validly appoint a receiver in the purported implementation of the agreement said to have been reached between the parties

5. Having heard learned counsel for the parties, I find no substance in this revision In the first place the impugned order has been expressly passed not in the independent exercise of the Court s powers under O XL, R 1 of the Civil P C but in implementation of an agreement stated to have been reached between the parties earlier This is clear from a bare perusal of the order and, indeed, it was not seriously disputed by the learned counsel for the applicant. The order expressly states that it is being passed in view of the agreement arrived at between the parties. A certified copy of the agreement has been supplied to the Court by the applicant. The agreement is in the shape of what purports to be a record of the statements made before the court below as contemplated by the Explanation added by the Allahabad High Court to Order XXIII, Rule 3 which states that the expressions agreement and compromise include a joint statement of the parties concerned or their counsel recorded by the court and the expression instrument includes a statement of the plaintiff or his counsel recorded by the court. A perusal of the statement of the parties recorded by the court below leaves no room for doubt that it provided that the court shall itself appoint a receiver for the interim period till a Board of Trustees was elected in accordance with the terms of agreement reached by the parties. The agreement specifically empowered the court to appoint an interim receiver and by the impugned order the court has done neither less nor more than what it was expressly authorised by the parties to do

6 It is apparent that the interim receiver having been appointed specifically in terms of the statement recorded by the court below it cannot be challenged so long as the proceedings of the court whereby the statements of the parties disclosing that they have reached a settlement for the appointment of an interim receiver and disposal of the suit stand. The impugned order appointing interim receiver is simply a consequential order the basic order being one which the court below passed in terms of Order XXIII, Rule 3 read with the Explanation added thereto by the Allahabad High Court

7 Faced with the above difficulty Sri Mandhyan attempted to challenge the validity of the order passed by the court below recording the statements of the parties. It was urged that the said order cannot be sustained, firstly because a compromise under Order XXIII, Rule 3 has to be in writing, and, secondly because the order does not bear the signature of the applicant

8. Having given the submission a careful consideration, I find it difficult to accept it. Order 23 Rule 3 of the Code no doubt provides that an agreement or compromise has to be in writing and signed by the parties Where, therefore the parties submit before the court an agreement or compromise for an order that the same be recorded and a decree be passed in terms thereof it has certainly to be in writing and signed by the parties But the Explanation added by the Allahabad High Court to O XXIII Rule 3 does away with this requirement by necessary implication It provides

Explanation — The expressions, agreement and compromise include a joint statement of the parties concerned or their Counsel recorded by the Court, and the expression instrument includes a statement of the plaintiff or his counsel recorded by the Court."

The explanation equates the agreement and compromise with a joint statement of the parties concerned or their counsel as recorded by the

court and the expression instrument with a statement of the plaintiff or his counsel recorded by the Court. It is apparent that the provision in the Explanation substituting a joint statement of the parties for agreement and compromise necessarily obviates the requirement under R. 3 of O 23 of the agreement or compromise to be in writing signed by the parties For the joint statement is recorded by the Court and surely the Legislature would not and did not require that an order passed by a court should be signed also by the parties. Explanation to O 23 R 3 added by the Allahabad High Court does not speak of the statement of the parties but a joint statement of the parties concerned recorded by the court

9 I am therefore clearly of the opinion that reading O 23 R 3 together with the Explanation added by this Court it cannot be validly contended that just because the applicant chose not to sign beneath the order of the Court recording the joint statement of the parties and their counsel, the entire exercise was rendered invalid under O 23 R 3

10. Further the court below in its order recording the statement has noted as follows —

When the parties read over the statement and asked to sign the same and got busy signing the same Sri Hari Shanker defendant No 2 in the meantime, went away from the court

Appended below the joint statement recorded by the court below are the signatures of all the parties to the suit or their counsel except that of the applicant Sri Hari Shanker

11 Now O 23 R 3 itself contains an inbuilt machinery for investigating a claim that an adjustment has taken place as alleged. It provides that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question but no adjournment shall be granted for the purpose of deciding the question unless the Court for reasons to be recorded thinks fit to grant such adjournment

12 If therefore the applicant Sri Hari Shanker felt that the Court had not correctly recorded his statement or those of the other parties, he could have raised an objection then and there. He, however did not choose to challenge the order passed by the court below recording the joint statement of the parties and preferred to walk away from proceedings Further not only did the applicant not challenge the correctness of the order passed by he court below recording the joint statement of the parties before the court below itself but even in this Court neither in the grounds of revision nor in the affidavit filed in support of the stay application has the applicant challenged the correctness or accuracy of the statement recorded by the court below The objection raised in this connection by the applicant before this court is merely this that the agreement had not been signed by the applicant

13. That being so this Court is entitled to assume that the court below correctly recorded the statement of the parties including that of the applicant. Having agreed to the appointment of an interim receiver the applicant cannot be heard to contend in a civil revision that the order appointing the interim receiver by the court below should be set aside because the formalities contemplated under O 23, R 3 were according to the applicant, not strictly complied with by the court below

14 Lastly Sri Mandhyan submitted that the agreement or compromise is not in accordance with the Scheme of Administration of the trust. I am not inclined to entertain this submission at this stage Such an objection ought appropriately to have been raised before the court below itself If it is correct that the parties have reached a settlement for the disposal of the suit in a particular manner as recorded by the court below I do not think it ought to be open to the applicant to raise an objection of this kind in a revision under Section 115 of the Code of Civil Procedure None of the parties to the suit or the trustees has questioned the validity of the compromise. All the parties to the suit are willing to abide by the agreement reached between them before the court below I am hence not persuaded to disturb that arrangement at the instance of a lone individual.

15. In the result, the revision fails and is dismissed with costs.

Petition dismissed.

1986 ALL L J 300

V P MATHUR J

Brijendra Singh and others Appellants v State of U P Respondent

Criminal Appeal No 389 of 1979 D 17 8 1985

(A) Criminal P C (2 of 1974), S 220 — Joint trial — Dacoity — Dacoity at different houses committed at one and same time in single process within small periphery during period of one hour — Intention of dacoits to loot as many houses within as short duration as possible — Joint trial of accused in such case was justified (Penal Code (45 of 1860), S 396) (Para 11)

(B) Penal Code (45 of 1860), S 396 — Dacoity — No delay in lodging F.I.R — Direct and definite evidence as to recovery, arrest and participation of accused in dacoity — Witnesses having no enmity with accused persons nor any relationship with accused — Testimony of such witnesses cannot be discarded — Conviction of accused under S 396 held was proper (Evidence Act (1 of 1872) S 3) (Paras 18 19)

Cases Referred	Chronological Paras
1981 Cri LJ 196 (All)	15 17
1973 Cri LJ 1 5 AIR 1973 SC 51	15
AIR 1969 Tripura 42 1969 Cri LJ 1534	15
AIR 1956 SC 441 1956 Cri LJ 822	15

Addl Govt Advocate M A Ghoshal and N B Singh for Appellants B P Gupta S N Mulla and Sanjiv Ratan for Respondent

JUDGMENT — Mr Brahama Singh the then IIIrd Additional Sessions Judge Etawah by his order dated 29-1 79 convicted the five appellants of this case under S 396 I P C and sentenced each one of them to 10 years R I It is against this order that the present appeal has been filed

2. In the night between 12/13 1 1979 at about midnight Bhagwan Das complainant and members of his family were sleeping inside their house in village Nagla Chain Sukh which is a hamlet of village Briya and lies within the police station Auraiya district Etawah One of the sons of the complainant namely Ravindra Nath was sleeping in the Atari on the roof of the house There was a lantern lighted in the house A Goear Gas Plant had been fixed at the house of the complainant s neighbour namely Shri Ram and a bulb was lighted there The complainant heard some noise and got up He found some dacoits throwing torch light on the roof of his house Simultaneously he heard cries of Ravindra Nath from the roof He was crying for help The miscreants started firing Ram Das son of the complainant and the complainant himself tried to go up the stairs but there was indiscriminate firing by the miscreants and thus they were prevented from going up They however raised cries from the place they were at and the villagers — Rajendra Ram Babu Sita Ram Shyam Lal Ram Shanker Ram Bux Bira Lal Soney Lal Sri Ram Din Dayal Nam Sukh Sobaran Ram Singh and others were attracted They all came armed with lathis and lighting their torches Bundles of Karab were lying in front of the house of Shri Ram just in the neighbourhood of the house of the complainant Ram Das put fire to the same and thus created sufficient light When the pressure of the villagers became strong the dacoits fled away westward after looting about 9 houses in the neighbourhood It may also be mentioned here that Balwan had put fire to another Karab load which had been stacked near his house and that had also generated sufficient light The entire dacoity took about one hour to complete There were 10 to 12 dacoits who were variously armed with guns lathis pistols kantas spears kulhars etc Some of them were recognized by the complainant and other witnesses in the light on the spot Amongst them Brijendra Ram Autar Shri Ram and Radhey Shyam were named in the F I R Nothing was looted from the house of the complainant The neighbouring houses of Rajendra Shri Ram Sita Ram Shyam Lal Ram Shanker Ram Babu and Daya Ram were looted As a result of the firing by the dacoits Ravindra Nath and Rajendra sustained gun shot injuries Smt Sita Shree wife of Sita Ram received a lathi injury Ravindra Nath s condition was precarious Bhagwan Das got the F I R scribed

*Against order of Brahma Singh 3rd Addl Dist & S J Etawah D/ 22 1 1979

by Balwan in the village and along with it he proceeded to the police station asking the villagers to bring Ravindra Nath and other injured in a bullock cart to the police station At 8 30 A M on 13 1 79 F I R Ext Ka 1 was lodged in the Thana and the case was registered Mr Avadhesh Kumar Upadhyaya S H O conducted the investigation Meanwhile the bullock cart carrying the dead body of Ravindra Nath and other injured arrived at the Police Station Auraiya Ravindranath died on the way and the case was converted into one under S 396 I P C at 9 15 A M Mr Upadhyaya held the inquest and sent the deadbody to mortuary for post mortem examination He then recorded the statements of the prosecution witnesses and prepared a site plan He took bloodstained and simple earth from the place of occurrence and ashes from two places vide Exts 9 and 10 Torches of Parmal Munshi Lal Shri Ram and Soney Lal were taken into custody and were returned back after preparing the memos Exts Ka 24 to Ka 27 8 pellets were recovered from the scene of occurrence vide Ext

3 Dr D K Saxena (P W 13) on 14 1 78 at about 11 55 A M conducted the autopsy on the dead body of Ravindranath vide Ext Ka 20 and found that this young man of 25 years had three gun shot wounds and one abrasion on his body and his death was due to shock and haemorrhage as a result of these injuries He extracted two pellets from the dead body

4 Injured Surendra Kumar and Smt Sita Shree were examined by Dr Charanjit Singh (P W 2) at the State Dispensary Auraiya on 13 1 78 at 10 A M and 12 20 A M respectively Their injury reports are Exts Ka 2 and Ka 3 Surendra Kumar had multiple gun shot wounds of entry (41 in number) on the front of right arm elbow joint right fore arm and multiple gun shot wounds of entry (26 in number) on the left side of chest and left upper arm The Doctor was of the opinion that these injuries were caused by some fire arm X ray was advised

5 Smt Sita Shree wife of Sita Ram had one contusion 9 cm × 1 cm on the top of the right shoulder and the Doctor was of the opinion that it was caused by a blunt weapon It was simple in nature and was half a day old

6 On 4 2 78 the Investigating Officer learnt about the complicity of the accused Pratap in this case He promptly arrested him and put him under cover The Investigating Officer on 4 2 78 at 8 P M recovered from his possession a Razai cover (Ext 11 vide memo Ext Ka 28 It was sealed Then he was brought Baparda to the Thana where he was lodged in the lock up and the recovered articles were placed in the Malkhana Next day he was sent to Jail The property was put up for identification on 29 3 78 in the Court of the City Magistrate Etawah and was correctly identified by Parmal Singh and Ram Shanker vide Ext Ka 19 Accused Pratap was put up for identification in Jail on 27 3-78 and was correctly identified by Surendra Kumar Soney Lal Sita Ram and Munshi Lal vide Ext Ka 19

7 The accused pleaded not guilty and took a stand that they have been falsely implicated because of Renjish On their side extracts of Jail Register (Exts Kha 1 to Kha 4) and extracts of reports (Exts Kha 5 to Kha 10) were produced Ext Kha 11 is a Panchayat s judgment dated 2-8 76 and Ext Kha 12 is a certified copy of the complaint in the case Chhedu Lal v Maharam dated 8-6 1976

8 The prosecution examined Bhagwan Dass Surendra Kumar Soney Lal Ram Shanker and Sita Ram as witnesses of fact Parmal Singh was examined as a witness who identified the recovered Razai cover Other witnesses were formal including the Magistrate the Doctor and the Investigating Officer and Police personnel

9 On the side of defence Balwan Singh who is scribe of the F I R was examined as D W 1 and Shri Ram as D W 2 Sri S P Saxena Assistant Jailor was examined as D W 3 and Constable Ram Sanehi Lal and Head Constable Raj Kumar were examined as D Ws 4 and 5 respectively while Chhotey Lal S I Malkhana Incharge was examined as D W 6

10 The first point agitated before me somewhat half heartedly was regarding the factum of dacoity Besides the sworn testimonies of the witnesses of whom I have made a mention above there is other evidence on record also which proves the factum of dacoity It appears that although the dacoits

had tried to commit dacoity at the house of the complainant also after they had committed the murder of the complainant s son they perhaps did not take courage to loot the property there but they continued looting the property in the neighbouring houses Ravindra Nath son of the complainant undoubtedly received gun shot injuries as a result of which he died A lengthy cross-examination of the Doctor has been made but now it is conceded that the death could have been a result of the firing at the time of the commission of this dacoity There is also on record evidence to show that Surendra Kumar and Smt Sita Shree wife of Sri Sita Ram also sustained injuries the former as a result of the firing and the later as a result of lathi blow When the Investigating Officer reached the spot he not only recovered blood-stained earth but also 8 pellets (Ext 7) and empty cartridges from the spot He also recovered from the spot from two places ashes of burnt Karab D W 1 Balwan stated during the examination in-chief that a dacoity was perpetrated on the date time and place as alleged by the prosecution This is also the testimony of D W 2 Shri Ram Therefore it is now established beyond doubt that a dacoity did take place in which about 9 houses were looted by the decoits one person was murdered and two injured

11 Again a half-hearted argument has been advanced by the learned counsel for the appellants that the evidence shows that the dacoity was committed in more than three houses and as such it was a case of 9 dacoities and not of one and a joint trial was not permissible under the law The learned trial Court has dealt with this matter in some detail If it is found that the dacoities were committed in the course of the same transaction the case will squarely fall within the four corners of S 220 Cr P C which lays down that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person he may be charged with and tried at one trial for every such offence In the present case the entire evidence on record is to the effect that simultaneously dacoities were committed in all the 9 houses and the firing was being resorted to from the roofs of different houses and it was indiscriminate There is evidence to show that the dacoits were standing on the roofs of different houses. Even firing which resulted in the death of Ravindra Nath was made from the roof of Hetram There is also evidence to the effect that during the course of the dacoity the dacoits were mentioning the casualties that were taking place and asking their companions to hurry up as the villagers had started to mount pressure In all 10 to 12 firings were made Looting in different houses was going on at the same time From the testimony of Surendra Kumar (P W 3) it appears that he emerged from his house while the firing was continuing He tried to run to safety and in that process he was injured Similarly Soney Lal s contention is that he saw two of the dacoits armed with guns two with country made pistols and the remaining with spears kantas and axes and while they looted the ornaments currency notes and cash they also looted silver Sutiya weighing 10 tolas Similarly his brother Shyam Lal s house was also looted and during the course of dacoity Ravindra Nath was killed and Surendra Kumar was injured There is the testimony of Shyam Lal that the dacoits were threatening the villagers that if they came out of the houses they will be shot dead This threat was being given by those who were standing on different roofs He shut his door but it was broken open by an axe Simultaneously the houses of Ram Bux and Daya Ram were also looted The dacoits were resorting to indscriminate firing According to Ram Shanker the dacoits looted four Razais of Parmal Singh which had been given by him for the purpose of sewing and 20 pieces of cloths which were tied on a bicycle standing inside Ram Shanker Tailor s house and it was in this dacoity that Ravindra Nath was murdered and Surendra Kumar and Sita Ram s wife received injuries There is also evidence to show that when Sita Ram s wife Smt Sita Shree tried to intervene she was given a beating with Dandas and iron rod It is thus clear from the entire evidence on record that the dacoity at different houses was committed at one and the same time in the single process within a small periphery during a period of one hour and the purpose and intention of the dacoits was to loot as many houses within as short a duration as possible The entire bunch of dacoits was busy for about one hour some giving threats some firing with their weapons and some others looting the property from different houses Continuity of process between the various

acts done by the dacoits is established There is thus evidence to show that the criminal acts that were done were not isolated but were inspired by integrity of process and will be deemed to have been committed in one series so connected together as to form the same transaction Therefore the joint trial was justified and does not suffer from any defect

12 It is argued that there was delay in lodging the F I R The occurrence took place at about midnight and the F I R was lodged at 8 30 A M the next morning at a distance of 3 miles It should not be forgotten that the complainant s son was very seriously injured and there were two other injured persons Arrangement for a bullock cart had to be made and with the mental make up of the villagers who were in a state of tension and fear on account of loot of a number of houses in the village and injuries to some it is very natural that they should have started for the Thana with some delay The F I R was scribed in the village and then taken to the Thana The learned Court below discarded the testimony of Balwan when he says that he scribed the report on 13 1 78 at 10 00 at the instance of the Investigating Officer in the Thana itself No such suggestion was given to the Investigating Officer and Balwan was telling a lie when he said so He even went to the extent of saying that part of the F I R is not in his handwriting but during cross-examination he had to change that stand It appears that he was siding with the defence in order to demolish the prosecution story From the entire evidence on record it is clear that no oral information was conveyed to the Thana regarding the commission of this dacoity and actually it was only the F I R in writing which was handed over and on the basis of which the case was registered In my opinion the circumstances of the case go to show that there was no delay in the lodging of the F I R

13. There is also some argument regarding the absence of the light on the spot It is said that neither the Karab was burnt nor there was any lantern nor the torches of the witnesses nor any lighted bulb connected with the Gobar Gas Plant at the house of one of the witnesses Now so far as the lantern and torches of the witnesses are concerned there is definite and direct evidence of the witnesses on record and there is no reason why it should be discarded At two places Karab was burnt and even the defence witness had to admit that he put fire to a Karab load near his house but he says that he did so after the dacoity was over This is a very silly statement Nobody can expect that the fire will be put to Karab load unnecessarily without any purpose after the dacoits had receded It only shows that Karab was only put to fire when the dacoity was in progress So far as the other Karab load is concerned there is definite evidence to show that it was during the course of the dacoity that the fire was put to it As regards the bulb it is not disputed that a Gobar Gas Plant is fixed at the house of Shriram Shriram admits the fact and says that after 8 00 P M they used to put light off There appears to be no justification for the same When the bulb has been fixed the purpose was to keep it lighted during the night and therefore when the witnesses say that this bulb was lighted even when this occurrence took place they have to be believed

14 The most vehement argument is that the appellants are all known persons and there is no evidence to show that they took any precaution to conceal their identity and hence it has to be held that they did not take part in this occurrence This argument is in respect of Brijendra Singh Shriram Ram Autar and Radhey Shyam So far as Pratap is concerned he has not been named in the F I R The case against him depends upon the identification evidence and it is nobody s case that he was known from before although the defence has tried to connect him also with other accused persons and one Chheda Lal It is true that generally we do not expect known persons from the neighbourhood to go and commit dacoity at the houses of known persons without trying to conceal their faces in an open manner but this general rule of conduct is not universally applicable in each and every case. There may be cases in which known persons do commit heinous offences without concealing their identity

15 The dictum of the Supreme Court in the case of Ram Shanker Singh v State of U P AIR 1956 SC 441 does not lay down a general principle that known persons would not commit dacoity without taking precaution to conceal their identity If this contention of the defence is upheld then any neighbour can

easily commit dacoity and escape on the ground that he did not conceal his identity before committing the dacoity Every case will have to depend upon its own facts and circumstances This was the view taken in the case of Pramod Chand v State AIR 1969 Tripura 42 There is yet another case of Chandra Bhan v State 1981 Cri LJ 196 (All) in which the following observation is of relevance —

But out of enmity the names of two known persons were introduced who would ordinarily not go to commit dacoity without taking care of concealing their faces Even in that case there is no such hard and fast rule that known persons would not go to commit dacoity without taking care to concealing the faces It depends upon the temperament of a person There can be hardened criminals When a known person is desperate and very much inimical he can go to commit dacoity without taking the usual precaution of covering his face It was so held by the Supreme Court in the case of Sivaram v State of Bihar 1973 Cri LJ 1 to

16 In Siva Ram's case the High Court had held that the witnesses were both interested and partisan and still after applying the standard of caution and care after scrutiny the High Court found the evidence of the witnesses to be reliable and convicted the appellant

The Supreme Court observed —

That being the position however improbable it might appear at first sight for the appellant to have participated in the incident it is difficult to get over the evidence of his having been identified and named by Sitaram and the other witnesses almost immediately after the incident The only explanation about the highly desperate act on the part of the appellant is his antipathy towards Sitaram getting the better of him which made him abandon any caution which he would have otherwise taken while participating in such an incident

17 Even the reasons for known persons taking part in a dacoity without concealing their identity as mentioned in the case of Chandra Bhan (1981 Cri LJ 196) (All) (supra) are not exhaustive and complete There may be other reasons in addition to the reason of desperate enmity e.g the belief in the mind of the culprits that they might not be known to the witnesses and similar other reasons So far as the mind of a culprit is concerned its working cannot be a subject of even a guess by others Why a certain man commits dacoity with open face at a place where there is likelihood of his having been known is a matter that cannot be explained by mere outsiders The ultimate result of this discussion is that merely because known persons commit dacoity without taking precaution it cannot be held as a matter of rule that they could not have committed that dacoity The entire evidence will have to be looked into with great care and caution if it is established on the evidence on record that those who took part in the dacoity under such circumstances were not only known but also inimically disposed against the complainant and other witnesses and that the witnesses were partisan It is in the light of this legal position that leads us now to consider the evidence of the witnesses against the named accused persons

18 The known accused persons who have been named in the F I R are Brijendra Singh Ram Autar Radhey Shyam and Shri Ram There is some documentary evidence on record vide Exts Kha 5 to Kha 10 proved by Constable Raj Kumar (D W 5) to show that between 4-9 75 and October 1977 some F I Rs were lodged by Gaya Prasad Brijendra Singh Chhedi Lal mostly under Ss 504 and 506 I P C against Bhagwan Das and his son Ram Das The scribes of those F I Rs have not been produced Bhagwan Das denies the fact of occurrences mentioned in those F I Rs In one particular case in which Brijendra Singh named Ishwar Chand one of the sons of Bhagwan Das as an accused it is established that Ishwar Chand was on Army duty on 15-6 1977 and hence the report was baseless Chhedi Lal it appears in the year 1974 had started proceedings under Sec 435 I P C against Bhagwan Das and this case ended in acquittal Ext Ka 2 which is the judgment of the Panchayat is a document of the year 1976 and it shows that Ram Das had filed a suit against Chhedi Lal and it was disposed of on Chhedi Lal's special oath Therefore we may say that there was some enmity between Chhedi Lal Brijendra Singh and Gaya Prasad on one hand and Bhagwan Das and his family members on the other But so far as the prosecution witnesses other than Bhagwan Das and his

sons are concerned namely Surendra Kumar Soney Lal, Ram Shanker and Sitaram, there is no allegation much less any proof of any enmity with any of the accused or even with Chhedi Lal. There is also no allegation anywhere that they belong to the party of Bhagwan Das and so should be presumed inimically disposed against Chhedi Lal and his relatives It may be mentioned here that out of nominated accused, Radhey Shyam belongs to village Muren which lies within the police station Ajitmal Ram Autar belongs to village Sukhanpur within the police station Nagalpur district Kanpur Brijendra Singh belongs to village Narayanpur which lies within the police station Auraiya but is far away from the village of the complainant and Shriram belongs to Turkupur which is within the police station Phaphund All the accused including Pratap have claimed some relationship with Chhedi Lal. Pratap says that he is Chhedi Lal s father in law The absurdity of this statement has been pointed out by the learned Sessions Judge when he says that a young man like Pratap can hardly be the father in law of Chhedi Lal. The details of relationship are not given Both Ram Autar and Brijendra Singh claimed to be the Bahnois of Chhedi Lal and they are not brothers inter se Therefore this relationship is doubtful In any view of the matter it is clear that these persons were not so well known to the witnesses of this case as relatives of Chhedi Lal. In all, there were 10 to 12 dacoits who committed the dacoity on that fateful night Nomination has been made of only four It means therefore that 8 others were not known to the witnesses from before Under these circumstances when the witnesses specifically mentioned the presence of these four named persons amongst the culprits and their testimonies are corroborative of each other and further when it is established beyond doubt that at least Surendra Kumar Soney Lal, Ram Shanker and Sitaram had no enmity with Chhedi Lal or with these accused persons nor any relationship with Bhagwan Das and their family members there is no reason why their testimonies should be discarded

19 We then come to the case against Pratap He is not named in the F I R. and it has not been elicited from any of the witnesses that he was known to them from before He might be claiming to be a relative of Chhedi Lal but that fact is not established Even otherwise also he was arrested on 2 4-78 at 8 00 P M. although he was not mentioned in the F I R. by name and the Investigating Officer recovered a Razai cover Ext I from his possession vide memo Ext. Ka 28 He was kept under cover and then sent to Jail the next day again under cover He was put up for identification in Jail on 27 3-78 where he was correctly identified by Surendra Kumar (P W 2) Soney Lal (P W 6) Sita Ram (P W 9) and Munshi Lal. The memo is Ext Ka 18 The property recovered from him was put up for identification on 28-3-78 by the City Magistrate Etawah in his court at 3 20 P M and Ram Shanker (P W 8) and Parmal Singh (P W 7) the owner correctly identified the Razai Cover Ext. I vide memo Ext. Ka 19 Mr S C Mathur City Magistrate has been examined as P W 12. There is the testimony of Ram Shanker that Parmal Singh had given him four Razai covers for being stitched and he had also 20 other cloth pieces tied to the carrier of his bicycle which were all looted and taken away by the dacoits. Parmal Singh has been examined as P W 7 and he corroborates that statement regarding the Razai cover and identifies Ext I There is thus direct and definite evidence not only of recovery from and the arrest of Pratap but also of his participation in this dacoity I am, therefore of the view that Brijendra Singh, Ram Autar Pratap Radhey Shyam and Shriram were guilty of the offence under Sec 396 I P C They were rightly convicted and the sentence of 10 years R.I awarded to each one of them cannot be said to be harsh

20 In the result, the appeal has no force and is hereby dismissed The convictions of the accused-appellants and the sentences awarded to them are upheld and confirmed. Their bail bonds are cancelled and sureties discharged They are on bail They shall surrender forthwith and be taken into custody to serve out their sentences

Appeal dismissed

1986 ALL. L J 306

(LUCKNOW BENCH)

KAMLESHWAR NATH J

Gyanendra Lal and another Petitioners v Bishun Narain Misra and another Respondents

Writ Petn No 2310 of 1984 D/ 20-8 1985

(A) Civil P C (5 of 1908), O 15, R. 5(1) (U P) — U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972) S 30(1) — Expression "in any suit" in O 15, R 5(1) — Interpretation of — Covers also ancillary proceeding u/s 30 — Tenant depositing rent in Court under S 30 of Rent Act — He is entitled to benefit of deposit for purpose of O 15, R 5

It is clear enough that under S 30(1) of the Act, a person claiming to be a tenant may deposit any amount as rent in the Court of Munsif having jurisdiction, if the landlord refuses to accept the same S 20(2)(a) of the Act obliges a tenant to pay the rent to the landlord within one month from the date of service upon him of a notice of demand If the landlord refused to accept the rent, when tendered by the tenant, the only form available to the tenant for depositing the rent in order to save the mischief of S 20(2)(a) of the Act, was to deposit the amount in the Court of concerned Munsif at least till service of summons upon him of the suit filed by the landlord. If the deposit thus made in the Court of Munsif is not given credit to for the purposes of deposit under O 15 R 5 CPC the tenant would have to make a double deposit, namely to make a deposit over again of the amount already deposited under S 30 of the Act That could not be the intention of the Legislature in enacting the provision of O 15 R. 5 C P C The object thereof was to ensure the deposit of the rent to the landlord and not merely to provide a penalty against the tenant. It would be contrary to the object of the rule if the expression in any suit" in sub-rule (1) thereof was so strictly to be construed as to signify the proceedings of the particular suit alone and not the ancillary proceedings under S 30 of the Act (Para 6)

It will also be appreciated that once the landlord refuses to accept rent, the right of the tenant, under S 30(1) of the Act, to deposit the amount in the Court of Munsif accrues This right must continue unless it is forbidden, expressly or by necessary implication by any other statutory provision The provisions of O 1 R 5 C P C cannot be interpreted to expressly or by necessary implication curtail or eration of the provisions of S 30(1) of the Act The result would be that from the time of the finding of a suit by the lessor against the lessee there would be two courses open to the tenant, namely either to deposit the amount under S 30(1) of the Act or to deposit it in the Court where the ejectment suit is pending under O 15 R 5 C P C This option necessarily belongs to the tenant and if he opts in favour of one of these he does not commit any illegality or impropriety He is certainly entitled to the benefit of the deposit, made under S 30(1) of the Act, not only during the period prior to the institution of the suit for ejectment, but also during the subsequent period (Para 7)

(B) Constitution of India, Art 226 — Writ — New plea — Suit for ejectment and arrears of rent — Points regarding default in payment of rent within S 20(2)(a) of U P Act (13 of 1972) and water tax and unlawful deposit of amount of rent u/s 30 — Points cannot be raised for first time in writ petition (Para 10)

Cases Referred Chronological Paras

1980 All LJ 853 1980 All Rent Cas 544 4 6

Mahesh Chandra, Rakesh Kumar and A K Sinha, for Petitioners P Gupta, for Respondents

ORDER — This writ petition under Art 226 of the Constitution of India is for a Writ of Certiorari to quash judgment and order dt 1 12 1983 contained in Annexure 3 to the writ petition passed by learned Additional District Judge (Special Judge) Lucknow in a proceeding under O 15 R 5 C P C

2 The petitioners are landlords of a house in which opposite party No 1 Bishun Narain Misra is a tenant The former served a composite notice of ejectment and demand of arrears of rent, under S 106 T P Act and under S 20(2)(a) of the U P Urban Buildings (Regulation of Letting Rent & Eviction) Act, 1972 (U P Act No 13 of 1972) (for short, the

Act) on the Opposite party No 1 on 25 11 80 Ultimately suit for ejectment and arrears of rent was filed by the petitioners against Opposite party No 1 in the Court of Judge Small Causes Lucknow Summonses were issued on 3 4-1981 fixing 7 5 1981 for filing written statement but the date was adjourned to 30 5 1981 on the request of Opposite party No 1 On the adjourned date the Opposite party No 1 filed a written statement and stated, inter alia, that he had deposited the entire rent for the period from 15 3-1979 to 14-5 1981 in the Court of Munsif North, Lucknow in Misc Case No 193 of 1979 because the plaintiffs in the first instance refused the tender of rent and subsequently refused the rent sent by money order The petitioners then applied for striking off the defence of Opposite party No 1 under O 15 R 5 C P C The only point which was agitated on behalf of the petitioners, before the Judge Small Causes in that connection was that the deposit of rent should have been made in his Court and not under S 30 of the Act in the Court of Munsif, North Lucknow and, therefore there was no deposit in accordance with law The contention on behalf of the Opposite party No 1 was that the deposit made in the Court of Munsif is within the scope of the provisions of O 15 R 5 C P C and therefore it was a deposit according to law

3 Learned Judge Small Causes, Lucknow accepted the contention on behalf of the petitioners and struck off the defence Therefore he relied upon the evidence led by the petitioners on various issues framed in the suit, ignored the evidence produced on behalf of Opposite party No 1 and decreed the suit for ejectment and arrears of rent

4 In the revision before the Court of Additional District Judge Lucknow the contention on behalf of the petitioners was not accepted and relying upon the decision in the case of Munni Lal v IInd Addl. District Judge Ghazipur 1980 All Rent Cas 544 (1980 All LJ 853) it was held that the deposit made in the Court of Munsif was to be taken into consideration for the purposes of deposit under O 15 R 5 C P C The finding of the Judge Small Cause Court, striking off the defence was set aside and the case was remanded to the Judge Small Cause Court for disposal on merits.

5 Learned counsel for the petitioners contends that the expression in any suit by a lessor in sub-rule (1) of O 15 R 5 C P C would signify that the deposit must be made in the Court where the suit itself is pending i e in the Court of Judge Small Causes, and that the view of the Addl District Judge being contrary is erroneous It is not possible to accept the contention for two reasons

6 Firstly learned counsel for the petitioners has not been able to show that the decision in the case of Munni Lal v IInd Addl. District Judge Ghazipur (1980 All LJ 853) (supra) did not support the view adopted by the learned Additional District Judge The learned Judge has referred to para 12 of the report, whose relevant portion is extracted as follows —

> In my judgment all such sums of money which the tenant is required or permitted by or under a statute to deposit in any Court or with any authority towards arrears of rent can be taken into consideration on proof of the fact that the deposits were lawfully made "

The clear import is that the amount deposited under S 30 of the Act in the Court of Munsif, as the amount of rent payable by the tenant opposite party No 1 to the landlord petitioners has to be taken into consideration for the purposes of determining whether compliance of O 15 R 5 C P C has been done or not

It is clear enough that under S 30(1) of the Act, a person claiming to be a tenant may deposit any amount as rent in the Court of Munsif having jurisdiction if the landlord refuses to accept the same The notice of demand of rent had been served on 25 11 1980 the suit was filed sometime in the year 1981 S 20(2)(a) of the Act obliges a tenant to pay the rent to the landlord within one month from the date of service upon him of a notice of demand If the landlord refused to accept the rent, when tendered by the tenant, the only forum available to the tenant for depositing the rent in order to save the mischief of S. 20(2)(a) of the Act, was to deposit the amount in the Court of concerned Munsif at least till service of summons upon him of the suit filed by the landlord. If the deposit thus made in the Court of Munsif is not given credit to for the purposes of deposit under O 15 R 5 C P C the tenant would have to make a double deposit, namely to make a

deposit over again of the amount already deposited under S 30 of the Act That could not be the intention of the Legislature in enacting the provision of O 15 R 5 C P C The object thereof was to ensure the deposit of the rent to the landlord and not merely to provide a penalty against the tenant. It appears to me that it would be contrary to the object of the rule if the expression in any suit in sub-rule (1) thereof was so strictly to be construed as to signify the proceedings of the particular suit alone and not the ancillary proceeding under S 30 of the Act

7 It will also be appreciated that once the landlord refuses to accept rent, the right of the tenant, under S 30(1) of the Act, to deposit the amount in the Court of Munsif accrues This right must continue unless it is forbidden, expressly or by necessary implication by any other statutory provision The provisions of O 15 R 5 C P C cannot be interpreted to expressly or by necessary implication curtail operation of the provisions of S 30(1) of the Act The result would be that from the time of the filing of a suit by the lessor against the lessee there would be two courses open to the tenant, namely either to deposit the amount under S 30(1) of the Act or to deposit it in the Court where the ejectment suit is pending under O 15 R 5 C P C This option necessarily belongs to the tenant and if he opts in favour of one of these he does not commit any illegality or impropriety He is certainly entitled to the benefit of the deposit, made under S 30(1) of the Act. Not only during the period prior to the institution of the suit for ejectment, but also during the subsequent period

8. Learned counsel for the petitioners then contended that the deposite under S 30 of the Act was not lawful because the landlord had not refused to accept the rent which, indeed, had never been tendered to them He further contends that the tenant did not pay water-tax which was liable to be paid as rent, and in that sense also the amount deposited was inadequate

9 The pleading of the tenant in these respects was that he had tendered the amount in the first instance which the landlord refused and thereafter he sent the rent by money order, which again the landlord refused and, therefore, he deposited the rent under S 30 of the Act. It was also urged that by agreement between the parties, water tax was already included in the agreed monthly rent of Rs. 50/

10 The important aspect, for the purposes of this writ petition, is that these points had not been raised, either before the trial Court or before the revisional Court, and cannot be permitted to be raised for the first time in this writ petition The matter rests upon findings of fact which can be recorded only after both the parties had entered evidence and the same is assessed and appreciated for the purpose It is a different matter that on the merits of the case these points would still be available to the petitioners to be agitated to make out that the Opposite party No 1 had made a default in payment of rent as contemplated by S 20(2)(a) of the Act inasmuch as he unlawfully deposited the amount of rent under S 30 of the Act and did not pay so much of the rent as was in the form of water tax There is no doubt that if these points had been urged before the trial Court, they would have been considered and discussed in the light of evidence of both the parties before striking off the defence On the face of it these points had not been raised for the purpose they cannot be permitted to be raised in this writ petition

11 In view of what has been stated above this writ petition is not fit to be admitted and is dismissed in limine

Petition dismissed

1986 ALL L J 308

(LUCKNOW BENCH)

R A MISRA J

Ateeq Mohammad and another Applicants v Amanullah and others Opposite Parties

Criminal Revn No 77 of 1980 D/ 9-5 1985

Criminal P C (2 of 1974), Ss. 125, 421(1) — Realisation of amount of maintenance — Property of husband attached and kept with supardar — Supardar failing to produce property attached for sale — Directions by Magistrate to attach property of supardar — Illegal. (Para 7)

S M Yousuf and S M Nasir for Applicants
Govt Advocate for Opposite Parties

KC/LC/C94/85/VSM/SNV

ORDER — This revision arises out of the order dt 28 1 1980 passed by Sri C P Singh Second Additional Sessions Judge Gonda, allowing revision of Amanullah Supurdar and setting aside the order dt 19-3 1979 passed by Sri A. R Sharma 5th Additional Munsif Magistrate Gonda rejecting Amanullah s application dt. 8-5-79 for withdrawl of the order of attachment of his property

2 The facts briefly stated are these —

Ateeq Mohammad and Kumari Shafiun Nisa, the minor son and daughter of Saeek Mohammad O P No 2 were granted maintenance under S 125 of the Cr P C Saeek Mohammad, the father failed to comply with the directions of the Court without sufficient cause The learned Magistrate therefore issued a warrant for levying the amount due in the manner provided for levying fine as provided under S 125 sub-cl (3) Cr P C and some moveable property of Saeek Mohammad was attached and given in the custody of Amanullah It so appears that subsequently Amanullah failed to produce the attached moveable property for sale when called upon to do so The learned Magistrate thereupon, directed that the amount be realised by the attachment of the property belonging to the Supurdar Amanullah. An application moved by Amanullah for setting aside the aforesaid order of attachment and sale of his property was rejected by the learned Magistrate but in revision the learned Sessions Judge set aside the order passed by the learned Magistrate for attachment and sale of Amanullah s property The minors to wit Ateeq Mohammad and Ku Shafiun Nisa, who are entitled for the maintenance have preferred this revision against the aforesaid order of the Sessions Judge

3 I have heard the learned counsel for both the parties

4 The fact that a direction was issued by the learned Magistrate in exercise of his powers under S 125 of the Cr P C for payment of maintenance to the minors by their father Saeek Mohammad and also the fact that Saeek Mohammad failed to comply with the order and directions of the Court whereupon his moveable property was attached go unchallenged and are established from the material on the record. Amanullah contested the proceedings before the Court below on the ground that the moveable property was not actually given in his custody but both the Courts below have repelled his contention on the ground that Supurdaginama bears his signature The learned Sessions Judge has allowed the revision and set aside the order of the Magistrate on the ground that the Supurdaginama does not make the Supurdar liable for production of the attached property and in terms of the Supurdaginama it is not possible to recover any amount by attachment of the property belonging to Amanullah

5 The learned counsel for the revisionists has not been able to refer to any provision under the Code of the Criminal Procedure or any other law where by the amount may be realised by attachment and sale of the property belonging to Amanullah under the circumstances narrated above

6 Section 125 sub-cl. (3) provides that, if any person so ordered fails without sufficient cause to comply with the order any such Magistrate may for every breach of the order issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole or any part of each month s allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment is sooner made So the amount of maintenance may be realised as a fine Section 421 of the Cr P C authorises a Magistrate to issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender for the recovery of the fine In the instant case a warrant appears to have been issued under S 421(1)(a) of the Code and in execution thereof the moveable property of Saeek Mohammad appears to have been attached. Sub-sec (2) of S 421 of the Code provides that the State Government may make rules for the summary determination of any claim that may be made in respect of the property attached under sub-sec (1)(a) and it is the duty of the Court in such cases to hold a proper enquiry into the title of the claimant. The learned Magistrate, it so appears, has not followed any summary procedure which may have been laid down by the State Government in exercise of its powers under sub-sec (2) of S 421 of the Code The learned counsel for both the parties have not been able to lay their

hands on any such rules framed by the State Government under S 421 sub-sec (2) of the Code and as observed above the Court below also does not appear to have followed any such procedure In case the State Government has made rules regulating the manner in which warrants under Cl (a) of sub-sec (1) of S 421 of the Code to be executed then the Court below shall proceed with the matter according to such rules but in case no such rules have been framed so far then in my opinion the procedure prescribed for the enquiry into claims etc under S 83 of the Cr P C should be adopted In the instant case the learned counsel for the revisionists has not been able to refer to any provision under which the property of the Supurdar may be attached and put to sale in cases where the Supurdar fails to produce the property when called upon to do so

7 In the result the direction of the Magistrate to recover the maintenance amount (by attachment and sale of the property belonging to the Supurdar Amanullah is not in accordance with law has been correctly set aside by the Sessions Judge though on different grounds The revision shall, therefore fail but the learned Magistrate is directed to proceed with the matter for recovery of the amount of maintenance according to law in the light of the observations made above

8 Before taking leave of this case I would like to observe that the minors are suffering because the maintenance granted to them is not being recovered The learned Magistrate shall try his best to expedite the matter and see that the amount of maintenance is paid to the minors as early as possible

9 The office of this Court shall see that the record of the trial Court as well as of the Court of Session is sent back positively within ten days

Revision dismissed.

1986 ALL L J 310

K N SINGH J

Smt Sharda Devi and another Petitioners v Ist Addl District & Sessions Judge Azamgarh and others Respondents

Civil Misc Writ Petn No 6232 of 1980 D 23-9 1985

(A) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 20(2)(e) — Eviction of tenant for subletting — Expression "has sublet" includes subletting prior to enforcement of 1972 Act — Hence decree for eviction can be passed against tenant for subletting premises under old Act 1980 All WC 385 (FB) Followed (Paras 5, 6)

(B) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972) S 20(2)(e) — Eviction of tenant on ground of subletting — Sub-tenant alleging that he has entered into partnership with tenant and was occupying premises as tenant after original tenant left — Permission or knowledge of landlady for partnership not proved — Held, that possession of sub-tenant was illegal and he was liable to be ejected (Para 7)

(C) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972) Ss 20(2)(e) and 34 — Suit for ejectment — Default in payment of rent for more than four months — Order of trial Court decreeing suit in favour of landlady — Interference with order of trial Court in revision without setting aside finding of trial Court regarding default, is illegal. (Para 7)

Cases Referred Chronological Paras

1980 All WC 385 (1980 All Rent Cas 223 (FB)) 5
1977 All LJ 118 1976 All WC 801 5
1976 All WC 791 5

Prakash Gupta, for Petitioners Standing Counsel for Respondents

ORDER — This petition was heard and disposed of by an elaborate order dt 6 1 1984 Thereafter an application was made on behalf of Kedar Singh respondent for the recall of my order dt 6-1 1984 on the ground that his counsel was not heard After hearing parties I allowed the application and recalled my order dt 6-1 1984

LC/AD/G842/85/KJK/MVJ

2 Having heard Sri Prakash Gupta for the petitioner and Sri Sripat Narain Singh and Smt R D Gupta for the respondents I do not find any good ground to take a different view other than that taken by me in my order dt 6 1 1984

3 This petition under Art 226 of Constitution is directed against the order of the First Additional District Judge Azamgarh dt 9-4-1980 setting aside the order of the Judge Small Cause Court and dismissing the petitioner's suit for ejectment of respondent 3

4 The petitioner is landlady of the building in dispute She filed a suit for eviction of Vijai Kumar Singh respondent 3 on the ground that he had committed default in making payment and that he had illegally sublet a portion of the building to Sardar Kedar Singh respondent 2 Vijai Kumar Singh respondent 3 did not contest the suit instead he entered into a compromise with the landlady on 13-11 1978 according to which he accepted the liability of a sum of Rs 780 as arrears of rent Sardar Kedar Singh contested the suit on the ground that he was tenant in his own right and the landlady did not accept rent from him since long He denied the status of a sub-tenant The learned Judge held that Sardar Kedar Singh was not a tenant in his own right as he had failed to prove that any rent was paid by him to the landlady or that the landlady had ever agreed to his occupation of the building in dispute The learned Judge held that Sardar Kedar Singh had been inducted into the building as a sub-tenant by Vijai Kumar Singh the tenant and as such Sardar Kedar Singh's possession was illegal and he was liable to be ejected On these findings the learned Judge decreed the petitioner's suit Aggrieved Sardar Kedar Singh filed a revision against the order of the Judge Small Cause Court The revisional Court by its order dated April 9 1980 held that as Sardar Kedar Singh had been inducted as sub-tenant prior to the enforcement of U P Act XIII of 1972 his possession was not illegal and no decree for his ejectment could be passed against him as the provisions of U P Act XIII of 1972 did not apply to the case Aggrieved the landlady has filed the present petition challenging the order of the revisional Court

5 Learned counsel for the petitioner urged that the view taken by the revisional Court that the U P Act XIII of 1972 did not apply to a subletting effected prior to the enforcement of the Act is erroneous I find merit in the contention Under S 20(2)(e) of the Act a suit for eviction of a tenant from a building is maintainable on the ground that the tenant has sublet in contravention of the provisions of S 20 or as the case may be of the old Act the whole or any part of the building The expression has sublet includes a subletting prior to the enforcement of the 1972 Act Moreover Clause (e) itself makes it amply clear that even if the subletting is done under the old Act the subletting is permissible This view is supported by two decisions of this Court in Syed Irshad Husain Rizvi v Hamida Khatoon 1976 All WC 791 and Shambhu Nath Tandon v IX Addl District Judge 1976 All WC 801 (1977 All LJ 118) The view taken in these two authorities was affirmed by a Full Bench in Smt Keshar Bai v District Judge 1980 All WC 385 The view taken by the revisional Court is contrary to the aforesaid decisions

6 The learned Judge of the revisional Court referred to a number of authorities of this Court on the question that S 12 of the U P Act XIII of 1972 was not retrospective The learned Judge however failed to notice the statutory provisions contained in S 20(2)(e) of the Act which clearly provide that a suit for ejectment of a tenant is maintainable on the ground of subletting irrespective of the fact that subletting was done prior to the enforcement of the 1972 Act. As already noted, the trial Court had recorded findings on appraisal of evidence on record that Sardar Kedar Singh was a sub-tenant and he had failed to prove the case set up by him that he was a tenant in his own right That finding was not disturbed by the revisional Court and as such the order of the trial Court decreeing the petitioner's suit is liable to be restored

7 Learned counsel for the respondents urged that Kedar Singh had entered into a partnership deed with Vijai Kumar Singh for carrying on business with the knowledge and permission of the landlady and as such Kedar Singh himself became tenant in his own right and as Vijai Kumar Singh walked out of the partnership Kedar Singh continued to occupy the premises as tenant. He could not therefore be ejected on the ground of alleged sub-

tenancy This submission cannot be accepted as neither the trial Court nor the revisional Court has recorded any finding that the partnership under which Kedar Singh was inducted as a tenant of the premises in dispute had been entered into with the permission and knowledge of the landlady In the absence of permission from the landlady Vijai Kumar Singh the original tenant had no authority in law to induct Kedar Singh. Kedar Singh would not derive any legal title of a tenant merely on the basis of the partnership deed which had been entered into between him and Vijai Kumar Singh Moreover the trial Court recorded a finding that the respondents had committed default in paymnt of rent for a period of more than four months and on that ground also the landlady s suit for respondents ejectment was liable to be decreed. This fiding was not set aside by the revisional Court. In my opinion the revisional Court committed apparent error of law in interfering with the trial Court s order

8 In the result the petition succeeds and is accordingly allowed The order of the revisional Court dt 9-4-1980 is quashed The petitioner is entitled to her costs

Petition allowed

1986 ALL L J 312

K N SINGH AND
A N DIKSHIT JJ

Ghanshyam Bhagat, Petitioner v State of Uttar Pradesh and another Respondents

Habeas Corpus Petn No 8983 of 1985 D/ 25-9-1985

(A) National Security Act (65 of 1980), S 3 — Detention under — Order of detention passed on basis of subjective satisfaction founded on few incidents of murder and assault — Grounds relating to incidents quite old and stale — Undue delay in passing detention order — Order is not sustainable. (Para 2)

(B) National Security Act (65 of 1980), S. 3 — Detention order — Disturbance of public peace and tranquillity — Detenu alleged to have kidnapped ones and his associates from verandah of Court using force — No evidence to show that this incident had disturbed the even life of community — Solitary incident directed against detenu cannot be held to affect public order — Act alleged does not relate to public order but to law and order — Detention, not sustainable. (Para 3)

(C) National Security Act (65 of 1980), S 3 — Detention — Language and formation of sentences in grounds of detention almost verbatim reproduction of police order — Non application of mind by District Magistrate — Deter tion order is vitiated. AIR 1985 SC 764 Rel on (Para 4)

(D) National Security Act (65 of 1980), S 3 — Detention under — Detention order served on detenu with delay of about a year — No reasonable explanation for delay given by detaining authority — Detention order is invalid.

Whenever there is unreasonable delay in the execution of the order of detention, it is the duty of the detaining authority to place all relevant details to show that each and every effort was made to arrest the petitioner and that the authority acted with promptitude to serve the order on the detenu AIR 1974 SC 2353 1975 SC 1517 Rel on (Para 6)

Cases Referred	Chronological	Paras
AIR 1985 SC 764	1985 Cri LJ 527	4
AIR 1975 SC 1517	1975 Cri LJ 1328	5
AIR 1974 SC 2353		5

Vineet Saran for Petitioner Standing Counsel for Respondents

K N SINGH, J — The petitioner challenges his detention under an order dt. 27th Aug. 1984 made by the District Magistrate Saharanpur under S 3 of the National Security Act, 1980 There are several grounds taken in the petition for challenging validity of the order of detention, but it is not necessary to refer to them since we find that there are four grounds which are sufficient to dispose of this petition To appreciate these grounds it is necessary to notice few facts

2. The order of detention was made on 27th Aug 1984 and it was based on subjective satisfaction of the District Magistrate Saharanpur that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order This subjective satisfaction was founded on five incidents of

murder and assault as contained in the grounds of detention furnished to the petitioner Ground No 1 relates to an incident alleged to have taken place on 6-9 1982 while ground No 2 relates to an incident of 24-11 1982 and ground No 3 refers to an incident dt 6-9 1982 Ground No 4 relates to an incident of 27th July 1983 while ground No 5 relates to an incident alleged to have taken place on July 12 1984 Out of the five grounds four grounds relate to the incidents of 1982 and 1983 which are quite old and stale If the petitioner s detention was necessary so as to prevent him from indulging into similar activities for the purpose of maintaining public order one would expect that the District Magistrate would have made an order of detention as early as 1982 or 1983 but the order of detention was passed on August 27 1984 There was undue delay in making the detention order against the petitioner on the grounds Nos 1 to 4 It would be reasonable to assume that the District Magistrate of Saharanpur if he was genuinely and reasonably satisfied that it was necessary to detain the petitioner to prevent him from acting in any manner prejudicial to maintenance of public order would have acted with greater promptitude in making the order of detention and the petitioner would not have been allowed to remain at large for such a long period of time for carrying on the activities which are alleged to be prejudicial to public order For all these reasons the petitioner s detention on grounds Nos 1 to 4 is not sustainable

3 As regards ground No 5 it relates to an incident which is alleged to have taken place on 12 7 1984 The petitioner is alleged to have kidnapped Sunil Yadav along with his associates from the verandah of the Court of the Chief Judicial Magistrate Saharanpur The petitioner is alleged to have used force in taking away Sunil Yadav in a car As a result of this incident the entire Court compound was gripped with terror and fear A report of this incident was lodged at the police station and during investigation Om Singh witness told the police that the petitioner was involved in the incident This incident relates to a single act of kidnapping of an individual by the petitioner and his associates By its own nature it has no potentiality to disturb the public peace and tranquility A solitary incident directed against a particular individual even if it may cause scare temporarily in the locality cannot be held to affect public order No material has been placed before the Court to show that this incident of kidnapping of Sunil Yadav had the potentiality to disturb the even life of the community We are clearly of the opinion that the petitioner s detention on ground No 5 is not sustainable as the act alleged to have been committed by the petitioner does not relate to public order instead it relates to law and order

4 The detention order dt 27-6-1984 was made by the District Magistrate on the basis of a police report The Sub-Inspector of Police submitted a detailed report to the District Magistrate through the Senior Superintendent of Police on 24-8 1984 The Senior Superintendent of Police forwarded the Sub-Inspector s report to the District Magistrate and on 27th Aug 1984 the District Magistrate made the detention order The incident narrated in the report of the Sub-Inspector was incorporated in the grounds by the District Magistrate on the basis of which he made the order On a comparison of the Sub-Inspector s report and the grounds served on the petitioner along with the detention order show that the District Magistrate did not apply his mind, instead he mechanically reproduced the police report verbatim in the grounds The language and the formation of sentences in the grounds of detention are almost verbatim reproduction of the police report In almost similar circumstances the Supreme Court in Jai Singh v State of Jammu & Kashmir AIR 1985 SC 764 held the detention order illegal on the ground that the detention order was reproduction of the report made by the police In the instant case also the District Magistrate reproduced the proposal made by the Sub-Inspector verbatim which makes it abundantly clear that he did not apply his mind and passed the order mechanically For this reason the detention order is vitiated

5 The detention order was made by the District Magistrate on 27th Aug 1984 and it was served on him on July 1 1985 almost after eleven months If it was necessary to detain him, the authorities concerned should have acted with promptitude in serving the order and arresting the petitioner but the authorities committed undue delay in the service of the order on the petitioner The undue delay in the actual arrest after the detention order was made is sufficient to vitiate

the subjective satisfaction of the detaining authorities was held by the Supreme Court in Sh Nizamuddin v State of West Bengal AIR 1974 SC 2392 and S K Serajul v State of West Bengal AIR 197 SC 1471

6 Whenever there is unreasonable delay in arresting a detenu pursuant to the order of detention the detaining authority must give reasons for the delay In the instant case the District Magistrate has made an attempt to explain the delay In paras 5 and 6 of his affidavit the District Magistrate (the detaining authority) has stated that he made the order of detention on 17 8 1984 directing the petitioners detention in District Jail Saharanpur The detention order was sent to the Senior Superintendent of Police Saharanpur for service on the petitioner The petitioner could not be arrested as he was absconding and proceedings under Ss 82/83 Cr P C were initiated against him This is the only explanation The District Magistrate has failed to place the relevant dates before the Court We do not know on what date the detention order was sent to the Senior Superintendent of Police Saharanpur for service of the same on the petitioner We further do not know when the proceedings were initiated against the petitioner under Ss 82 83 Cr P C In the absence of relevant details it is not possible to accept the bald explanation for the delay As noted earlier the detention order was made on 27 8-1984 and it was served on the petitioner in July 1985 with a delay of about a year and no reasonable explanation is forthcoming from the respondents Whenever there is unreasonable delay in the execution of the order of detention, it is the duty of the detaining authority to place all relevant details to show that each and every effort was made to arrest the petitioner and that the authority acted with promptitude to serve the order on the detenu In the instant case the explanation given by the detaining authority is not sufficient to sustain the order

7 For the reasons stated above the petitioner's detention is rendered illegal, we accordingly allow the petition and direct the respondents to set the petitioner at liberty forthwith unless required to be detained in some other case

Petition allowed

1986 ALL L J 314

S K DHAON J

Mathura Dutt Bist Petitioner v State Transport Appellate Tribunal Lucknow and others Respondents

Civil Misc Writ Petn No 1669 of 1985 D 2 9 1985

Motor Vehicles Act (4 of 1939), Ss 47(3) 62(2) (as amended by Act No 56 of 1969) — Temporary permits — Grant of, during pendency of applications for permanent permit — R T A has jurisdiction to grant temporary permits if any of two conditions specified in sub-s. (2) of S 62 exists

Under S 62(2) it has been provided that a R T A is empowered to grant temporary permits on a particular route if that Authority has been restrained from granting permanent permits by any order passed by any competent Court as Authority The other contingency provided by the Legislature is that in the event an existing permit has either been cancelled or suspended a temporary permit can be granted to fill in the vacancy caused by such a suspension or cancellation of a permit. Further if the Transport Authority has so far not exercised its powers under S 47(3) with respect to the route it shall be open to it to grant temporary permits on the route (Paras 3 4)

L P Natthani for Petitioner Standing Counsel for Respondents

ORDER — The petitioner challenges the legality of an order dt 12th June 1984 passed by the State Transport Appellate Tribunal U P Lucknow (hereinafter referred to as the Appellate Tribunal) directing the R T A Nainital (hereafter referred to as the Transport Authority) to grant temporary stage carriage permits on the Haldwani — Kaladhongi — Bajanja — Haldu — Kotabagh — Pawalgarh — Bailparao — Bamnagar route (hereinafter referred to as the route)

2 The sole contention advanced is that the Appellate Tribunal exceeded his jurisdiction in issuing such a direction According to the petitioner applications for the grant of permanent stage carriage permits were pending before the Transport Authority on 12th June 1984 and that situation obtains till date

3 The first proviso to S 62 of the M V Act, 1939 (hereinafter referred to as the Act) imposes a complete ban on the grant of temporary stage carriage permits during the pendency of an application for the grant of a permanent stage carriage permit made under S 46 of the Act By an amendment introduced by Act No 56 of 1969 Parliament relaxed the rigor of the said proviso and in S 62(2) it has provided that a R T A is empowered to grant temporary permits on a particular route if that Authority has been restrained from granting permanent permits by any order passed by any competent Court or Authority It is also provided that the number of temporary permits to be granted shall not exceed the number of permits which the Transport Authority could have granted but for the order of restraint issued by the Competent Authority or Court The other contingency provided by the Legislature is that in the event an existing permit has either been cancelled or suspended a temporary permit can be granted to fill in the vacancy caused by such a suspension or cancellation of a permit To put it differently a R T A has full jurisdiction to grant temporary permits during pendency of applications for the grant of permanent stage carriage permits if any of the two conditions specified in sub-sec (2) exists

4 It is now well settled that an application for the grant of a permanent stage carriage permit on a route can be entertained only if the R T A has, in the exercise of powers under S 47(3) of the Act recognises that route by fixing a limit on it If the R T A has not exercised his powers with respect to a route under S 47(3) then the question of an application for a permanent permit being received and the same remaining pending before the R.T A does not arise Therefore if the Transport Authority has so far not exercised its powers under S 47(3) of the Act with respect to the route it shall be open to it to grant temporary permits on the route to meet the requirements of the travelling public

5 It is again made clear that if their exists any vacancy on the route as a consequence of the action taken by the Transport Authority under S 47(3) of the Act and applications/application for the grant of permanent permits or permit are or is pending before the Transport Authority and none of the situations as contemplated in S 62(2) of the Act is attracted the Transport Authority shall refrain from giving effect to the impugned order of the Appellate Tribunal

6 This petition stands disposed of finally in the light of the observations made above

Order accordingly

1986 ALL L J 31s

A BANERJI AND V K KHANNA JJ

Sri Ram Tewari Petitioner v Passenger Tax Officer Gorakhpur Respondent

Writ Petn No 466 of 1985 D 7 10-1985

(A) Motor Vehicles Act (1939), S 2(g) — "Stage carriage" — Private vehicle carrying more than six passengers for hire or reward — It is a stage carriage

Definition of stage carriage as given in S 2(g) would embrace within its fold a vehicle which, though a private vehicle is found carrying more than six passengers for hire or reward even though it is not registered as stage carriage with the motor vehicle authorities The definition of stage carriage uses the words carrying or is adapted to carry Any vehicle which is adapted to carry besides the driver six passengers for hire or reward would be regarded as stage carriage unless exempted Similarly a vehicle which is carrying more than six passengers for hire or reward would also come within the definition of stage carriage AIR 1979 SC 343 distng (Para 4)

(B) Constitution of India, Art. 226 — Writ petition — Maintainability — Statutory remedy of appeal, not exhausted by petitioner — Petition not maintainable in absence of good reasons.

Where there is a statutory remedy the petitioner should normally exhaust the remedy before approaching the High Court under Art. 226 There may be exceptional cases where the Court may interfere even though there is an alternative remedy and it has not been availed of But such cases are rare and there must be good reasons thereon before the Court is asked to interfere (Para 5)

LC/AD/G843/85/TGD: SNV

Cases Referred Chronological Paras

(1983) Writ Petn No 189 of 1983 (All) Prem Singh v Passenger Tax Officer Nainital 6
AIR 1979 SC 343 4

S K Varma and I P Srivastava for Petitioner Chief Standing Counsel for Respondent.

A BANERJI, J — This writ petition has been filed by Sri Ram Tewari under Art. 226 of the Constitution, challenging imposition of Passenger Tax on his Jeep vide order dt 18th June 1985 The stand taken by the petitioner is that his Jeep is a private Jeep and not a stage carriage and consequently exempted from Passenger Tax under the provisions of U P Motor Gadi Yatri Kar Adhiniyam, 1962 The stand taken by the respondent Passenger Tax Officer is that the vehicle in question was carrying eleven persons when it was stopped and a notice under S 8 of the Adhiniyam was sent to the petitioner both through registered post and in due course None appeared to contest the matter and on the basis of the material on the record the order dt. 18th June 1985 (Annexure-1 to the writ petition) was passed by the Passenger Tax Officer imposing a sum of Rs 1120/ as Passenger Tax for January 1985 Rs. 280/ as Additional Passenger Tax Rs 70/ as Insurance Charges and Rs 100/ as penalty in all Rs 1570/ He was also given 30 days time to pay up the aforesaid amount The petitioner did not file any appeal which is statutorily provided under the provisions of S 13(1) and has come up to this Court directly The writ petition was filed in this Court on 25th July 1985 We have heard learned counsel for the parties and proceed to dispose of the petition at the stage of admission as permitted under the Rules of the Court

2 Mr S K Varma, learned counsel for the petitioner raised three contentions First, that the petitioner was not served with a notice under S 8 of and he was not aware of any date fixed by the Passenger Tax Officer in this matter Secondly the vehicle in question viz the Jeep was a private vehicle and not a stage carriage consequently there could be no imposition of passenger tax on the said vehicle Thirdly there is no finding anywhere by the Passenger Tax Officer that the vehicle was carrying passengers for hire or reward on the day it was detained and consequently the imposition of passenger tax was bad in law Learned counsel also argued that the authorities could only prosecute the driver and the owner of the vehicle for overloading the Jeep under the Motor Vehicles Act 1939

3 Learned Standing Counsel raised preliminary objections about the maintainability of the writ petition His contentions were two fold Firstly the petitioner had an alternative remedy viz, by a statutory appeal and he ought to have exhausted the remedy before approaching this Court under Art 226 of the Constitution Secondly if the petitioner had not received any notice under S 8 of the Adhiniyam and was not aware of the proceedings of 18th June 1985 he could have made an application to the Passenger Tax Officer for recalling of the order which the officer was competent to recall and as such he should not have approached this Court without first exhausting this remedy On the merits learned Standing Counsel urged that it is not necessary that a vehicle should be registered as stage carriage for the purposes of imposition of Passenger Tax but if the vehicle was such which came within the definition of stage carriage in S 2(g) of the Act it would be stage carriage notwithstanding the fact that it was not registered as stage carriage In this context he urged that a vehicle which was carrying more than six passengers for hire or reward would be deemed to be a stage carriage and such a stage carriage could be proceeded against for payment of Passenger Tax under the provisions of Motor Gadi Yatri Kar Adhiniyam, 1962 Refuting the argument that ends of justice would be met by merely prosecuting the driver and the owner of the vehicle for overloading the vehicle and was the appropriate course open to the R T O learned Standing Counsel argued that those provisions were under the Motor Vehicles Act, whereas in the present case the proceedings were under the Adhiniyam

4 Having heard learned counsel for the parties we are of the view that the petitioner should seek one or more of the remedies available to him We would, therefore not express our opinion on the merits, but would certainly make it clear that the definition of stage carriage as given in S 2(g) of the Motor Vehicles Act would embrace within its fold a vehicle which, though a private vehicle is

found carrying more than six passengers for hire or reward, even though it is not registered as stage carriage with the Motor Vehicle Authorities The definition of stage carriage uses the words carrying or is adapted to carry" Any vehicle which is adapted to carry besides the driver six passengers would be regarded as stage carriage unless exempted Similarly a vehicle which is carrying more than six passengers for hire or reward would also come within the definition of stage carriage Reference was made to the decision in the case of Tata Engineering and Locomotive Co Ltd v Sales Tax Officer Poona, AIR 1979 SC 343 by learned counsel for the petitioner However that decision, in our opinion would not help the petitioner In that case a private vehicle was found carrying employees of the Company to the work site and they were being charged a small amount. The Court observed that since the Company's vehicle was employed to carry its own workers it would not tantamount to carrying passengers for hire In our opinion the above decision is clearly distinguishable We have already observed that we do not propose to express any opinion on the merits We will, therefore not go in the question as to whether a notice was duly served on the petitioner or not, and whether the vehicle was carrying more than six passengers and whether it was being so done for hire or reward. All these are questions of facts which will be looked into and decided by the Passenger Tax Officer or the Appellate Authority

5 We find the contention of the learned Standing Counsel regarding maintainability of the petition to be sound It is well settled by their Lordships of the Supreme Court that where there is a statutory remedy the petitioner should normally exhaust the remedy before approaching the High Court under Art. 226 of the Constitution There may be exceptional cases where the Court may interfere even though there is an alternative remedy and it has not been availed of But such cases are rare and there must be good reasons shown before the Court is asked to interfere We do not find any good reason for exercising our discretion and power under Art 226 of the Constitution in the present case Even if the period of time for making an application for recalling the order on the ground that no notice was served, has expired, the petitioner would have seven days from the date of obtaining certified copy of this order to make such an application to the concerned Passenger Tax Officer In the case the petitioner desires to file an appeal, he may do so within a period of seven days from the date of obtaining a certified copy of this order

6 Learned Counsel for the petitioner had raised a contention that several other writ petitions raising similar points had been entertained by this Court One such case referred to was Writ Petn No 189 of 1983 — Prem Singh v Passenger Tax Officer Nainital That case pertains to a taxi cab That vehicle was challaned for carrying 13 passengers and the matter was compounded by the driver by payment of Rs 70/ The contention was that the passenger tax could not be imposed on taxi cab/motor car The facts of that case are not similar to the present one In that case notice had been served on the erring owners of the vehicle and the matter had been compounded by the driver which means that there was an admission that the vehicle was carrying more than six passengers Further the admission of a writ petition by a Bench of the Court does not bind another Division Bench from dismissing in limine another writ petition If the facts in the two writ petitions are exactly the same and they raise common questions of law and facts the admission for hearing of a petition will certainly have a persuasive value on the later Division Bench However the admission of a case is not binding as a precedence in every case As indicated above we are satisfied that the petitioner has two alternative remedies which he has not availed of and it is just and proper that he should avail them first before approaching this Court

7 We therefore dismiss the writ petition with the observations that the petitioner will be entitled to file an application for recalling the order imposing passenger tax before Passenger Tax Officer within seven days of obtaining a certified copy of this order and may likewise approach in an appeal, to the Appellate Authority against the order of the Passenger Tax Officer We order accordingly There will be no order as to costs

Petition dismissed

1986 ALL L J 318

S D AGARWALA, J

Girish Chandra, Petitioner v The Third Additional District Judge Pilibhit and others Respondents.

Civil Misc Writ No 11338 of 1983 D/ 18 10-1985

(A) U P Panchayat Raj Act (1947), Ss. 9, 12-C — U P Gaon Sabha Registration of Electors Order (1978), Para 26 — Election petition — Entries in electoral roll are final — They cannot be a subject of challenge in election petition

Section 9 read with the provisions of the U P Gaon Sabha Registration of Electors Order (1978) are a complete Code by themselves in the matter of preparation and maintenance of electoral roll and as the entries in the electoral roll are final, they cannot be a subject of challenge in an election petition filed under S 12 C Case law discussed (Para 15)

If the name of any person has been wrongly included in the electoral roll of the Gaon Sabha, a specific remedy has been provided to a person aggrieved to challenge the said inclusion The electoral roll has been given finality and the Civil Court has been debarred from entertaining or adjudicating upon the question whether any person is or is not entitled to be registered in an electoral roll for a Gaon Sabha. (Para 9)

(B) U P Panchayat Raj Act (1947), S 12 C(1)(b)(ii) — Election petition on ground of "gross failure to comply" — Failure of elected member to point out that his name was included in electoral roll of any other body — Cannot be a ground for challenging election under cl (ii)

Only when there is a gross failure to act in accordance with the Act and the Rules by the Officer on whom the Legislature has cast a duty to conduct the elections then only the election can be challenged on the ground mentioned in cl. (b)(ii) of sub-sec (1) of S 12 C (Paras 29 31)

Where there was no gross failure on the part of the officer concerned to follow the rules nor there was any allegation to that effect and the only allegation was that the elected member should have pointed out that his name was included in the electoral roll of any other body which he did not do the same could not be a ground for challenging the election under S 12 C(1)(b)(ii) (Para 32)

Cases Referred Chronological	Paras
AIR 1973 SC 717	15
AIR 1971 SC 1348	12
AIR 1970 SC 340	11
AIR 1970 Madh Pra 39	24
AIR 1963 SC 458	11
1963 All LJ 634 ILR (1963) 2 All 828	30

K. N Tripathi, for Petitioners M. C Misra and Standing Counsel, for Respondents

ORDER — This is a petition under Art 226 of the Constitution directed against the order dated 7th Sept 1983 passed by Third Additional District Judge Pilibhit in a revision under S 12 C of the U P Panchayat Raj Act, 1947 setting aside the election of the petitioner who was elected as Pradhan of the Gaon Sabha 81 Grant No 21 alias Dhakka Chaut, pargana and tahsil Pooranpur district Pilibhit.

2 On 3rd June 1982 the petitioner was declared duly elected to the office of the Pradhan of the above mentioned Gaon Sabha defeating respondent Nos. 2 to 6 Mohammad Hasan respondent No 2 filed an election petition before the Sub-Divisional Officer/ Prescribed Authority Pooranpur Pilibhit under S 12 C of the U P Panchayat Raj Act, 1947 (hereinafter referred to as the Act) The petition was filed on a number of grounds One of the grounds taken by respondent No 2 was that the petitioner's name was wrongly included in the Electoral Roll of the said Gaon Sabha and, for that reason, his nomination paper was invalid

3 The petition was contested by the petitioner By an order dated 22nd Mar 1983 the Sub-Divisional Officer Pooranpur Pilibhit, dismissed the election petition The Prescribed Authority held inter alia, that no corrupt practice was adopted during the election The other points raised by the respondent No 2 challenging the election were also decided

against the respondent No 2 The Prescribed Authority in particular held that the petitioner's name rightly appeared in the Voters List and that the election could not be challenged on that ground also

4 Aggrieved by that decision a revision was filed under S 12 C(6) of the Act before the District Judge In revision the order of the Prescribed Authority was challenged on two grounds, firstly it was argued that under S 12 C(7) the petitioner whose name appeared in the voters list of the Nagar Palika, Pilibhit, could not have been shown as a member of the concerned Gaon Sabha and as such, he was not competent to contest the election, and, secondly that the petitioner had adopted corrupt practices and disturbed the polling booth during the voting

5 The revisional court upheld the findings recorded by the Prescribed Authority that no corrupt practice was adopted by the petitioner as urged by the respondent No 2 The revisional court however on the first contention raised by the respondent No 2 held that the petitioner was wrongly entered in the voters list because he was not entitled to be registered in the electoral roll of the Gaon Sabha concerned because his name was entered in the electoral roll pertaining to Ward No 14 of Nagar Palika, Pilibhit, and that he had failed to show that his name had been struck off from the said electoral roll Having given this finding the revisional court further held that the petitioner was not entitled to be a candidate for election of the Pradhan and, as such, the result of the election was materially affected After recording this finding the election of the Petitioner was set aside by order dated 7th Sept 1983 which has been impugned in the present writ petition as mentioned earlier

6 Learned counsel for the petitioner has urged that it was not open to the prescribed Authority or the revisional court under S 12 C of the Act to go behind the electoral roll and enquire into the question as to whether the petitioner was validly included in the electoral roll of the Gaon Sabha or not It was further urged by the learned counsel that under the provisions of S 12 C of the Act, the election of Pradhan of a Gaon Sabha could not be challenged on the ground that the name of a candidate has been wrongly included in the electoral roll of the Gaon Sabha prepared under the provisions of the Act and the Rules framed thereunder

7 In order to consider the first submission raised by the learned counsel for the petitioner it is necessary to examine the various provisions of the Act by virtue of which the electoral roll of the Gaon Sabha is prepared

8 Section 9 of the Act provides that electoral roll for every Gaon Sabha shall be prepared in accordance with the provisions of the Act, under the supervision of the Nirvachan Nideshak (Panchayat) by an Electoral Registration Officer who shall be such officer of the State Government as the State Government may designate or nominate in this behalf This section further provides that the Electoral Registration Officer shall, prepare and publish such electoral roll in the manner prescribed, and upon its publication, it shall, subject to any alteration addition or modification made under or in accordance with this Act, be the electoral roll for the Gaon Sabha prepared in accordance with the provisions of the Act for the purposes of the election. Sub-sec (3) of S 9 of the Act provides that a person who has attained the age of 18 years and who is ordinarily a resident in the area of the Gaon Sabha, shall be entitled to be registered in the electoral roll. Sub-s (4) of S 9 of the Act provides certain disqualifications for registration Sub-section (7) which is relevant for the purposes of this case is in the following terms —

9(7) No person shall be entitled to be registered in the electoral roll for any Gaon Sabha, if his name is entered in any electoral roll pertaining to any city municipality notified area, cantonment or town area unless he shows that his name has been struck off such electoral roll

Sub-s (8) of S 9 of the Act entitles an Electoral Registration Officer to correct, delete or add in the electoral roll, either suo motu or on an application made to him. Sub-s (10) gives a right of appeal to a person aggrieved to the District Magistrate against the order of the Electoral Registration Officer in regard to inclusion, deletion or correction of a name in the Gaon Sabha electoral roll Sub-s. (11) empowers the State Government to make provisions in regard to the matters specified therein Sub-s (12) is very significant It

provides as under —

9(12) No civil court shall have jurisdiction—

(a) to entertain or adjudicate upon the quesuon whether any person is or is not entitled to be registered in an electoral roll for a Gaon Sabha or

(b) to question the legality of any action taken by or under the authority of an Electoral Registration Officer or of any decision given by an appellate authority under sub-s (10) or any authority appointed under this Act for the revision of any such roll

9 From an analysis of the various sub-sections of S 9 of the Act, it is apparent that if the name of any person has been wrongly included in the electoral roll of the Gaon Sabha, a specific remedy has been provided to a person aggrieved to challenge the said inclusion. The electoral roll has been given finality and the Civil Court has been debarred from entertaining or adjudicating upon the question whether any person is or is not entitled to be registered in an electoral roll for a Gaon Sabha.

10 Under S 9(1) of the Act, the Uttar Pradesh Gaon Sabha Registration of Electorals Order 1978 has been issued by the Governor of Uttar Pradesh. This Order lays down the manner in which the electoral roll has to be prepared. Cl. 10(b) of this order provides that any person in the roll on the ground that he is not qualified or has been disqualified to be registered in such roll may apply to the Electoral Registration Officer for correction The Order further contemplates that after all the objections to the electoral roll have been disposed of, the final electoral roll has to be published in accordance with cl. 10 of the Order Cl 25 of the Order lays down the manner in which an appeal can be filed from any decision of an Electoral Registration Officer The right of appeal has been given under Section 9(10) of the Act.

10-A. On an analysis of the various provisions of the Act and the U P Gaon Sabha Registration of Electorals Order 1978 it is clear that the provisions are a complete Code by themselves, laying down the manner in which electoral roll has to be prepared, the manner in which the said electoral roll can be challenged. Finality has also been given to the electoral roll. When the Act and the order is a complete Code by itself I have to consider as to whether the validity of the inclusion of the name of the petitioner in the electoral roll can be challenged in an election petition or not. It is pertinent to mention here that the election of the petitioner has been challenged on the ground mentioned in S 9(7) of the Act which provides that no person shall be entitled to be registered in the electoral roll for any Gaon Sabha if his name is entered in any electoral roll pertaining to any local body From form 4 of the Uttar Pradesh Gaon Sabha Registration of Electors Order 1978 it is apparent that this objection could have been taken by the respondent No 2 before the Electoral Registration Officer He did not at that stage take any objection to the name of the petitioner being included in the electoral roll of the Gaon Sabha and for the first time he raised an objection by means of an election petition under S 12 C of the Act

11 In B M Rama Swamy v B M Krishnamurthy AIR 1963 SC 458 the dispute in regard to the election to the Panchayat under the provisions of the Mysore Village Panchayat and Local Boards Act, 1959 came up for consideration. In this case the question arose as to whether if the name of any person included in the electoral roll was wrongly included then can the said question be canvassed in an election petition filed under the Act. The electoral roll in the said case had been prepared under the provisions of Representation of People Act, 1950 S 30 of this Act bars the jurisdiction of the civil court to question the legality of any action taken by or under the authority of the Electoral Registartion Officer The Supreme Court in view of this provision held that the voters list is final and as such it cannot be challenged by means of an election petition under the Act. A similar question again arose in Kabul Singh v Kundan Singh, AIR 1970 SC 340 The question whether it was open to a person to challenge the fact whether any person is or is not entitled to register himself in the electoral roll, in the election petition was examined by the Supreme Court in detail. In view of the provisions of S 30 of the Representation of People Act, 1950 where the Civil Court's jurisdiction had been barred the Supreme Court came to the conclusion that the entries found in the electoral roll are not open to challenge either before the Civil Court or before a Tribunal which considers the validity

of any election This view was arrived at after the Supreme Court recorded a finding that the provisions of 1950 Act mentioned above form a complete Code by itself in the matter of preparation and maintenance of electoral roll.

12 This question again arose in P R Belegah v B. D Jatti, AIR 1971 SC 1348 and it was opined by the Supreme Court as follows —

The entire scheme of Act of 1950 and the amplitude of its provisions show that the entries made in an Electoral Roll of a constituency can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless some question of violation of the provisions of the Constitution is involved

13 In this case an additional ground on which the Supreme Court said that the entry in the electoral roll cannot be challenged, was on an interpretation of S 100 of the Representation of the People Act 1951 The Supreme Court relied upon S 100 sub-cl. (1)(d)(iv) of Representation of the People Act which is as follows —

(iv) by any non-compliance with the provisions of the Constitution or of the Act or of any rules or orders made under this Act

14 The Supreme Court was on the view that the ground of election petition can be a violation of the provisions of 1951 Act. As the words this Act have been used in cl (iv) it excluded the 1950 Act which lays down the manner and preparation of the electoral roll

15 In S K Chaudhary v B Panjar AIR 1973 SC 717 the Hon'ble Supreme Court again took the view that it is not open in an election petition to go behind the electoral roll and enquire into the question whether the names of persons included therein were legal or not This decision was taken after reliance was placed on the earlier decisions mentioned by me. In view of the above I am of the opinion that though in the U P Panchayat Raj Act 1947 challenges to the provisions relating to preparation of electoral roll have not been specifically excluded as has been done in the case of the Representation of the People Act, 1951 but in view of the fact that S 9 of the Act read with the provisions of the U P Gaon Sabha Registration of Electoral Orders 1978 are a complete code by themselves in the matter of preparation and maintenance of electoral rolls and as the entries found in the electoral roll are final, they cannot be a subject of challenge in an election petition filed under S 12 C of the Act

16. It is however clarified that the entries in the electoral roll can only be subject of challenge under S 12 C(1)(b)(ii) of the Act where officer on whom the duty has been cast to prepare the rolls grossly fails to comply with the Act and the Rules, as is being discussed in detail while examining the second contention

17 In regard to the second submission made by the learned counsel it is necessary to quote S 12 C(1) of the Act which reads as under —

12 C. Application for questioning the elections

(1) The election of a person as Pradhan of a Gaon Sabha or as member of a Gaon Panchayat including the election of a person appointed as the Panch of the Nyaya Panchayat under S 43 shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground that —

(a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election or

(b) that the result of the election has been materially affected —

(i) by the improper acceptance or rejection of any nomination or

(ii) by gross failure to comply with the provisions of this Act or the rules framed thereunder

(2)

18. Under cl. (a) quoted above the election can be challenged on the ground that it was not a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election. The words bribery undue influence have been explained categorically in sub-s. (2)(a) and (b) of the Act. Under cl. (b) election can be set aside also on the ground that the result of the election has been materially affected by

improper acceptance or rejection of any nomination paper or by gross failure to comply with the provisions of this Act or Rules framed thereunder Chapter I E of the Rules lays down the procedure for election of Pradhan and Up Pradhan Rule 20 G has made the provisions of Rr 18 A 18 B and 18 C of Chapter I D applicable to the election of Pradhan and Up-Pradhan R 18 B(2) provides the ground on which the Nirvachan Adhikari may reject any nomination paper This rule is indicative of the fact that under cl. (b)(i) what possible grounds can be taken when the result of the election is challenged on the ground or improper acceptance or rejection of any nomination The counsel for the respondent No 2 has sought to bring his case under sub-cl (ii) of cl (b) quoted above namely that by illegally including the name of the petitioner in the electoral roll there is a gross failure to comply with the provisions of the Act and the Rules. It is, consequently necessary to interpret the provisions of this sub-clause In this sub-clause the significant words are gross failure to comply In S 100 of the Representation of the People Act 1951 the election can be challenged on a similar ground, mentioned in cl (iv) of sub-cl (d) of sub-s. (1) which has already been quoted above

19 In so far as the challenge under the provisions of Representation of the People Act is concerned, a challenge can be for non compliance with the provisions of the Constitution or of the Act or any Rules or Orders made under that Act. But here these words have not been used by the U P Legislature Here the challenge can be on the ground of "gross failure to comply with the provisions of the Act or Rules framed thereunder

20. In view of the above the scope of challenge in a petition under the U P Panchayat Raj Act 1947 is different from the scope of challenge under the provisions of the Representation of the People Act 1951

21 From a reading of S 12 C of the Act and the Rules framed thereunder framed for the election of the Pradhan and Up-Pradhan, it is clear that if an election is challenged on the ground mentioned in cl. (a) of sub-s (1) of S. 12-C of the Act, the words "bribery and undue influence" on the basis of which challenge can be made have been specifically defined Similarly if a challenge is made under cl (b)(i) of sub-s (1) of the said section then too the Rules provide the circumstances under which improper acceptance or rejection of any nomination can be challenged but it is significant that the Act and the Rules are silent when a challenge is made under cl. (b)(ii) of S 12 C(1) of the Act. This has been left to the Election Tribunal to decide in the circumstances of each case as to whether there has been a gross failure to comply with the provisions of the Act or the Rules framed thereunder which has materially affected the result of the election

22. It is therefore necessary to examine the scope of the expression gross failure to comply used in cl (b)(ii) of sub-s (1) of S 12 C of the Act

23 The word comply has been defined in Black s Law Dictionary as meaning to yield, to accommodate or to adapt oneself to act in accordance with In the context in which this word has been used in this sub-clause the meaning to be given to the word comply in my opinion, should be to act in accordance with It is apparent that the Legislature used the words gross failure and not merely failure A distinction has to be drawn between the words failure and gross failure The use of the word gross indicates that it is a higher degree of failure

24 In Nanhelal v Asstt Registrar Co-operative Societies Narsinghpur AIR 1970 Madh Pra 39 a Divisional Bench of the Madhya Pradesh High Court, while interpreting the expression gross negligence held as under —

There is a distinction between negligence and gross negligence although the exact dividing line is difficult to demarcate Gross negligence connotes higher degree of negligence It is negligence not arising merely from some want of foresight or mistake of judgment but from some culpable default "

25. In Corpus Juris Secundum, Volume 38 the meaning to be given to the word gross when used as an adjective has been stated as under

In one sense, the adjective has been defined as meaning beyond allowance out of all measure hence culpable or great flagrant not to be excused, or shameful In this sense, it has been held equivalent to "culpable"

26 In Black s Law Dictionary the word gross has also been defined as under

Out of all measure beyond allowance not to be excused flagrant shameful as a gross dereliction of duty a gross injustice gross carelessness

27 In Corpus Juris Secundum, Volume 35 the expression failure has been defined as under

an omission to perform a duty or appointed function and it is sometimes used in the sense of non performance of a duty that is, as the equivalent of neglect and covers both intentional and unintentional non performance

28 On a consideration of the definitions of the words gross failure and comply mentioned above I am of the opinion that the words gross failure to comply should be interpreted to mean flagrant omission to perform a duty in accordance with the Act and the Rules framed thereunder whether that was intentional or unintentional. The mere technical non compliance of the provisions of the Act and the Rules is not sufficient for challenging the election

29 If an officer on whom the duty has been cast to conduct the election in accordance with the provisions of the Act and the Rules framed thereunder does not follow the same and acts in flagrant violation of the same and the Court is of the opinion that this omission to perform the duty by the officer has resulted in materially affecting the election that can be a ground for challenge of the election

30 In Bhagoley v Balwant Singh, 1963 All LJ 634 a Division Bench of this Court had an occasion to consider the scope of Cl. (b)(ii) of sub-sec (1) of S 12 C of the Act. It observed as under —

In cases where the Election Tribunal comes to the finding that the officer entrusted with the preparation of register of members had deliberately and intentionally framed that register incorrectly by adding names which should not find place in it or by omitting names which should legitimately be entered in it, it would clearly be a case where that officer would be guilty of gross failure to comply with the provisions of the Act. There would be of course, cases where the inclusion of names in the register or omission of some names from it would be bona fide w happen whenever the entries in the register are made by the officer concerned according to the information available to him at the time of preparation of the register Even if it happens that some names are erroneously omitted or some erroneously entered it would not be a case of failure on the part of the officer to comply with the provisions of the Act

31 In view of the above dictum laid down by the Division Bench of this Court, it is clear that it is only when there is a gross failure to act in accordance with the Act and the Rules by the officer on whom the Legislature has cast a duty to conduct the elections then only the election can be challenged on the ground, mentioned in Cl. (b)(ii) of sub-sec. (1) of S 12C of the Act

32 So far as the present case is concerned, there was no gross failure on the part of the officer concerned to follow the rules nor there is any allegation to that effect The only allegation is that the petitioner should have pointed out that his name has been included in the electoral roll of any other body which he did not do This cannot possibly be a ground, in my opinion for challenging the election under S 12 C (1)(b)(ii) of the Act. The second submission made by the learned counsel for the petitioner in my opinion also is well founded

33 In view of the above I allow the petition and quash the order dated 7th Sept 1983 passed by the 3rd Additional District Judge Pilibhit. The petitioner shall be deemd to be a validly elected Pradhan of the Gaon Sabha concerned. The parties are directed to bear their own costs

Petition allowed

1986 ALL. L. J 323

H. N SETH AND A N VERMA, JJ

The Managing Committee Ram Prasad Bismil Higher Secondary School, Bareilly Petitioner v The Deputy Director of Education, IIIrd Region, Bareilly and others, Opposite Parties.

Civil Misc. Writ Petn No 4019 of 1985 D/ 12-9-1985

LC/BD/G875/85/AAI/SNV

U P High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act (24 of 1971), S 6(2) — Show cause notice in matter of suspension of management — Calling upon management to comply with directions issued by Deputy Director — Not condition precedent.

Section 6(2) clearly envisages that after the Deputy Director has received the recommendation made by the District Inspector of Schools under sub-sec (1) he has an option in the matter and two courses are open to him The two alternatives are —

(1) That he can call upon the management to comply with the direction or provision specified in the recommendation made by the District Inspector of Schools or

(2) require the management to show cause within a week why it should not be suspended

The first alternative is not a condition precedent for exercising of the second alternative (Paras 1 2)

S K Verma for Petitioner Standing Counsel for Opposite Parties

H N SETH, J — We are not satisfied that there is any merit in the petitioner s submission that before issuing a notice under S 6 of the Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act 1971 requiring the petitioner to show cause why it should not be suspended it was obligatory upon the Deputy Director of Education to call upon the petitioner to comply with certain directions issued by him S 6(2) which runs thus —

On receipt of a recommendation under sub-sec (1) the Regional Deputy Director may call upon the management to comply with the said direction or provision or to show cause within a week why the management should not be suspended "

clearly envisages that after the Deputy Director has received the recommendation made by the District Inspector of Schools under sub sec (1) he has an option in the matter and two courses are open to him The two alternatives are —

(1) That he can call upon the management to comply with the direction or provision specified in the recommendation made by the District Inspector of Schools or

(2) require the management to show cause within a week why it should not be suspended

2. The first alternative is not a condition precedent for exercising of the second alternative

3 Learned counsel for the petitioner has also contended that in the circumstances of the case the order passed by the Deputy Director was not appropriate We are not inclined to go into this aspect of the case The Act provides an appeal against the impugned order and there is no reason why the petitioner should not, for questioning the propriety of the order avail of the remedy provided in the Act itself

4 In the result we find no merit in this petition which fails and is dismissed

Petition dismissed.

1986 ALL. L. J 324

S K DHAON J

Anwarul Haq Fazli Petitioner v State Transport Appellate Tribunal, U P Lucknow and another Respondents

Civil Misc Writ Petn No 2111 of 1979 D/ 20-9 1985

(A) Motor Vehicles Act (4 of 1939), S. 64A — Revisional authority — Powers of — Can dismiss a revision either in default of appearance or default of prosecution

The words may pass such orders in relation to the case as it deems fit are wide enough to clothe the revisional authority with the jurisdiction to dismiss the revision in default of appearance of the applicant An order dismissing the revision either in default of appearance or in default of prosecution will be an order disposing of the revision and such an order will be a final one (Para 6)

In S 64 A a statutory duty has been cast upon the revisional authority to pass such orders as it thinks fit in the case The Tribunal should be presumed to possess such powers as are incidental to or consequential upon the carrying out of the statutory duty Surely the

exercise of power dismissing a revision either in default of appearance or in default of prosecution will be an incidental or consequential act In S 64A there is no provision either express or implied making it imperative upon the Tribunal to give its decision on the merits Therefore the revisional authority under S 64A has the power to dismiss the revision either in default of appearance or default of prosecution Case law discussed. (Para 8)

(B) Motor Vehicles Act (4 of 1939), S 64A — Revision under — Dismissal of — Restoration application — Hearing of — Adjournment application of Counsel on ground of personal illness — Adjournment to be granted

Where the Counsel had sent the application for adjournment of hearing an application for restoration of revision and had mentioned his personal illness as the ground, the same was enough for the adjournment of the hearing on the particular date Therefore the Tribunal had acted arbitrarily in rejecting the application for adjournment by the Counsel on his personal ground. (Para 12)

Cases Referred	Chronological	Paras
AIR 1971 All 573	1971 All LJ 595	9
AIR 1969 SC 1068		11
AIR 1968 SC 1227		7
(1964) 15 STC 116	1963 All LJ 1044	10

L P Nathani for Petitioner Standing Counsel for Respondents

ORDER — The petitioner has prayed for certiorari for quashing an order passed by the State Transport Appellate Tribunal U P Lucknow (hereinafter referred to as the Tribunal) dismissing his application for revision in default of appearance and also its subsequent order refusing to recall the earlier order of the dismissal of the revision

2. Admittedly neither the petitioner nor his counsel were present on the date fixed for the hearing of the revision The tribunal on Nov 3 1978 passed an order —

"The revision is dismissed in default of the revisionist."

March 1 1979 was fixed for the consideration of the application made by and on behalf of the petitioner for recalling the order passed on Nov 3 1978 The Tribunal passed the order in Hindi, the English rendering of which is somewhat like this. The applicant as well as his counsel are absent The Reader has reported that the allegations made in paragraphs 4 and 5 of the application are incorrect. Counsel has sent an application praying for adjournment The person who has brought the application has no connection with the case. As the application has not been legally presented it is being rejected. It appears, on the same date it rejected the application for restoration

3 A two pronged attack has been made First, the Tribunal had no jurisdiction to dismiss the revision in default of appearance Secondly the Tribunal acted arbitrarily in rejecting the application for recalling its order

4 The first submission is based upon an interpretation of the provisions as contained in S 64 A of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) The enacting part minus the three provisos there which are not relevant, may be extracted.

The State Transport Appellate Tribunal may either on its own motion or on an application made to it call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal," the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final."

The aforequoted provision except the words underlined by me are substantially the same as were originally inserted by Act No 100 of 1956 The words underlined have been inserted by Act No 56 of 1969 The contention is that the Tribunal is under a statutory obligation to pass an order on the merits of an application for revision and, therefore the dismissal in default of appearance is impliedly prohibited. Stress has been laid on the words underlined. It is also emphasised that although sub-r (6) of R 71 of the U P Motor Vehicles Rules, 1940 (hereinafter referred to as the Rules) provides that the Tribunal may for sufficient reason restore an appeal dismissed in default or for want of prosecution on an application moved by an appellant within fifteen days of

the knowledge of the order of dismissal of the appeal no such provision has been made in respect of an application for revision It is also submitted that the rules maintain a distinction between an appeal and a revision as R 71 A lays down the procedure to be followed in case of death of a party in appeal or revision

5. Sub-r (6) of R 71 it appears is not applicable to revisions in spite of it being trite that a revision forms part of the general appellate jurisdiction The scheme of the Act accepts the said proposition as it provides that the orders which are not appealable under S 64 are revisable under S 64A In fact orders falling under enumerated situations alone are appealable and all other orders are amenable to the revisional jurisdiction Furthermore, the powers of the revisional authority are not hedged in with any limitations as are to be found in S 115 of the Civil P C.

6. We have, therefore to concentrate upon the phraseology used by the Legislature in the enacting part of S 64A to discern the legislative intent whether a revisional authority is to sit like a silent spectator with folded hands even though it feels that a particular applicant before it has either chosen his own time for the hearing of the revision or is adopting dilatory tactics Such a construction should be made as a last resort In my opinion such is not the intendment in S 64-A. The words may pass such orders in relation to the case as it deems fit are wide enough to clothe the revisional authority with the jurisdiction to dismiss the revision in default of appearance of the applicant. An order dismissing the revision either in default of appearance or in default of prosecution will be an order disposing of the revision and such an order will be a final one

7 In Arbind Kumar Singh v Nand Kishore Prasad, AIR 1968 SC 1227 S 64 of the Act as amended by Bihar Act No 17 of 1950 which authorised the State Government to call for from any authority or officer subordinate to it, the record of such proceedings and after examining such records pass such orders as it thinks fit came up for interpretation It was held —

" The expression 'pass such orders as it thinks fit" is not restricted to the passing of orders which are final in character

Their Lordships held in that case that the revisional authority had the power to accept additional evidence

8. This problem can be approached from another angle In S 64-A a statutory duty has been cast upon the revisional authority to pass such orders as it thinks fit in the case The Tribunal should be presumed to possess such powers as are incidental to or consequential upon the carrying out of the statutory duty Surely the exercise of power dismissing a revision either in default of appearance or in default of prosecution will be an incidental or a consequential act It is to be remembered that in S 64A there is no provision either express or implied making it imperative upon the Tribunal to give its decision on the merits I am therefore of the view that the revisional authority under S 64A of the Act has the power to dismiss the revision either in default of appearance or default of prosecution

9 In Smt K N Sehgal v Commr Allahabad, AIR 1971 All 573 a Division Bench of this Court was called upon to interpret sub-s (3) of S 3 of the U P (Temporary) Control of Rent and Eviction Act 1947 and to decide whether under the said provision the revisional authority could dismiss the revision in default of appearance of an applicant before it. The said provision was —

The Commissioner shall hear the application made under sub-sec (2) and he may if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to the regularity of proceedings held before him, alter or reverse his order or make such other orders as may be just and proper

While holding that these provisions did not empower the Commissioner to dismiss the revision in default of appearance of a party the Bench laid emphasis on the words 'the Commissioner shall hear the application " In S 64A of the Act we do not find such words, on the contrary the revisional authority has been given a discretion to either call for or not to call for the record of a particular case Of course, this discretion has to be exercised on judicial considerations. It is to be noted that the Division Bench overruled the judgment of Satish Chandra, J (as he then was) who had taken the view that despite the provisions contained in sub-sec (3) of S 3 the

Commissioner had an inherent power of dismissing the revision for default of the appearance of a party The reasoning of the Division Bench appears to be based on the well known principle that when a matter or topic falls within the ambit of the express provision of the statute inherent power to that extent is regarded as abrogated by the Legislature

10 In Hindustan Metal Works v Sales Tax Officer (1964) 15 STC 116 a learned single Judge of this Court held that R 68 of the U P Sales Tax Rules which empowered the appellate Court to dismiss an appeal for default was ultra vires the Act Accordingly this Court quashed the order of the appellate authority dismissing the appeal in default of appearance The learned Judge based his judgment on the provisions as contained in the second proviso to sub-s (1) of S 9 of the U P Sales Tax Act which were —

"Provided secondly that the appellate authority shall not exercise any powers or perform any further function except those conferred on or entrusted to him as such authority

He also emphasised upon the contents of sub-sec (3) of S 9 which empowered the appellate authority to (a) confirm, reduce enhance or annul the assessment or (b) set aside the assessment and direct the assessing authority to pass fresh order after such further enquiry as may be directed, or confirm or cancel the order imposing penalty or reduce the amount of penalty imposed The learned Judge took the view that the second proviso to sub-sec. (1) of S 9 ruled out any notions of the exercise of inherent powers which are presumed to vest in all judicial and quasi judicial bodies He also took the view that the appellate Court under S 9 of the Sales Tax Act was a watch dog in the general public interest and particularly on behalf of the public revenues and in so far as taxes were gathered through the instrumentality of the Sales Tax Act He also held that the legislative intendment was that the appeal once filed by the assessee should be disposed of only on its merits This case is not Opposite

11 In Commr of Income-tax Madras v Chennappa Mudaliar AIR 1969 SC 1068 sub-sec (4) of S 33 of the Income-tax Act which was to the effect that the appellate authority may after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit and shall communicate any such order to the assessee and to the Commissioner came up for consideration It was held after emphasising on the word thereon that the appellate tribunal was bound to give a proper decision on questions of fact as well as law which could only be done if the appeal was disposed of on the merits and not dismissed owing to the absence of the appellant. Accordingly R 24 of the Income-tax Rules which provided for dismissal of an appeal in default of appearance of an appellant, was struck down as being in conflict with the provisions of sub-sec (4) of S 33 In S 64-A of the Act the word thereon is conspicuously missing Furthermore the scheme of the Income tax Act particularly of S 33 as analysed by their Lordships, indicated a definite intention that the appeal had to be disposed of on merits This case too therefore does not advance the cause of the petitioner

12 The Tribunal while exercising power under S 64-A exercises quasi-judicial powers It is not a Court stricto sensu Detailed procedures as applicable to Courts are not applicable to it No rules have been framed as to the manner in which proceedings before it shall be conducted It is true that the learned counsel for the petitioner adopted a somewhat odd procedure in sending the application for adjournment of the hearing of the application for restoration of the revision through some stranger It is to be noted that the counsel was residing at Meerut and he sent that application from that place It is also to be noted that the ground for seeking the adjournment was the illness of the counsel himself Obviously the counsel had signed the application The Tribunal had not expressed any doubt about the signature of the counsel on the application The mere fact that the learned counsel had sent the application and had mentioned his personal illness as the ground was enough for the adjournment of the hearing of the restoration application on that particular date. The Tribunal not only took a hypertechnical view of the matter but also acted somewhat arbitrarily in rejecting the application for adjournment made by the counsel on his personal ground. Consequently the order rejecting the application for restoration was bad.

13 This petition succeeds in part The order dated March 1979 passed by the Tribunal dismissing the application for restoration of the Revision No 440 of 1978 is quashed. The Tribunal is directed to dispose of Miscellaneous Application No 57 of 1978 in Revision No 440 of 1978 on merits and in accordance with law The parties are directed to bear their own costs

Petition partly allowed

1986 ALL. L. J 328

= AIR 1986 Allahabad 142

FULL BENCH

H N SETH A N VERMA AND V K. KHANNA JJ

Chhanga Prasad Sahu Petitioner v State of Uttar Pradesh and others Respondents

Civil Misc. Writ Petn No 4193 of 1977 D/ 18 1 1984

(A) Arms Act (54 of 1959), Ss 17, 18 — Arms licence — Revocation or suspension — Opportunity of hearing to licensee — Act excludes hearing to licensee prior to revocation/suspension of licence — Licensee cannot at enquiry held for revocation or suspension claim hearing on basis of principles of natural justice. AIR 1966 All 265, AIR 1969 Guj 349; AIR 1970 Orissa 110, AIR 1971 Ker 162, AIR 1972 Punj & Har 122 Held per incuriam (Constitution of India, Art. 226).

To the enquiry held by the licensing authority with a view to find out if the conditions for revoking/suspending the arms licence exist, it is not necessary for the licensing authority to associate the licensee and the licensee in such enquiry cannot claim it as of right — statutory or that based on principles of natural justice — that he must be heard and be given an opportunity to place his version of the case before the licensing authority AIR 1966 All 265 AIR 1969 Guj 349 AIR 1970 Orissa 110 AIR 1971 Ker 162 AIR 1972 Punj & Har 122 Held per incuriam AIR 1980 Cal 275 Foll. (Para 9)

Section 17(5) makes it obligatory upon the licensing authority to while passing the order revoking/suspending an arms licence record in writing the reasons therefor and to on demand, furnish a brief statement thereof to the holder of the licence unless it considers that it will not be in public interest to do so The legislative intention behind S 17(5) namely that if at all, the licensing authority is obliged to communicate to the licensee the grounds for revocation/suspension of the licence it is only after the order for revocation/suspension has been made is absolutely clear S 17(5) thus rules out any obligation on the part of the licensing authority to before making such order communicate the grounds for revoking or suspending the licence to the licensee Placing of any obligation on the licensing authority to notify the grounds for revoking or suspending the licence to the licensee before the order for revocation or suspension of the licence is made, would therefore result in forcing the licensing authority to do something which the statute does not oblige it to do (Para 5)

To say that despite specific statutory provision the licensing authority is, according to the principles of natural justice obliged to afford an opportunity to the licensee to show that the grounds mentioned in S 17(3) do not exist is not proper It is now well settled that rules of natural justice do not supplant the law but supplement it It is also settled that if a statutory provision can be read consistently with the principles of natural justice the courts should do so But if a statutory provision either specifically or by necessary implication excludes application of any rule of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into a concerned provision the principles of natural justice The statutory provisions contained in Sec 17 by necessary implication exclude the applicability of the said rule of natural justice till the stage the licensing authority makes an order for revocation/suspension of an arms licence The legislature having regard to the fact that the licences involved are in respect of dangerous weapons has specified the stage at which the principles of natural justice are in such cases to become applicable and has thereby ruled out the application of such principles at any other stage (Para 6)

(B) Arms Act (54 of 1959), S. 17 — Arms licence — Powers of licensing authority to revoke/suspend — Scope — Licensing

authority cannot pending enquiry into revocation or suspension of a licence, order its suspension — Such power does not where in powers conferred by S 17

The licensing authority has no power to suspend the arms licence pending enquiry into its cancellation/suspension (Para 22)

The object of the enquiry that a licensing authority may while proceeding to consider the question as to whether or not an arms licence should be revoked or suspended, like to make clearly is to enable the authority to come to a conclusion as to whether or not the facts stated in cls (a) to (e) of S 17(3) exist In this view of the matter it can safely be taken that where a licensing authority embarks upon such an enquiry it is till then not convinced about existence of the conditions mentioned in cls (a) to (e) of S 17(3) So long as it is not so convinced no case to make an order either revoking or suspending an arm s licence as contemplated by the section will be made out. (Para 14)

Neither S 17 empowers the licensing authority to make an order of suspension pending enquiry into existence of the facts justifying making of the order for revocation/suspension nor can it be said that such power is implied in the power conferred upon the licensing authority by S 17 The ground raised in favour of assumption of existence of such power in the licensing authority namely that unless such a power is assumed to exist in the licensing authority it may not be possible to in cases of urgency secure public peace and safety and thus the very object behind the provision may get defeated is untenable In case it becomes apparent to the licensing authority that possession of arms by the licensee is going to endanger public peace and safety it can straightway and without holding any enquiry proceed to revoke/suspend the arms licence However wherefrom the material before the licensing authority it is not apparent to it that there is an immediate danger to public peace and safety and the licensing authority proceeds to find out whether there is any likelihood of public peace and safety being affected at some future date, it cannot be said that there is any such urgency so as to justify the revocation/cancellation of the licence even before the licensing authority gets so satisfied. Considering the nature and the object of the enquiry it cannot be said that non conferment of the power to suspend an arm s licence pending enquiry has the effect of defeating the object for which such a power has been conferred upon the licensing authority (Para 18)

Before a power can be implied as an incidental power the Court has to be satisfied that existence of such power is absolutely essential for the discharge of the power conferred and not merely that it is convenient for its exercise. It can neither be said that the power to suspend an arm s licence pending an enquiry is absolutely necessary nor can it be said that the power to revoke/suspend a licence in the circumstances mentioned in Section 17 cannot be exercised unless a power to suspend the licence pending enquiry is also conceded to the licensing authority AIR 1970 SC 140 Rel on (Para 21)

Cases Referred Chronological	Paras
AIR 1980 Cal 275	9
AIR 1972 Punj & Har 122	13
AIR 1971 SC 40 1971 Lab IC 8	6
AIR 1971 Ker 162	13
AIR 1970 SC 140	20
AIR 1970 Orissa 110	13
AIR 1969 Guj 349	13
AIR 1968 All 383	10 11 12
AIR 1966 All 265	13

H N SETH, J — While considering the question as to whether the Executive Authorities have jurisdiction or power to suspend an arm s licence pending enquiry into proceedings for its cancellation or suspension a Division Bench of this Court has referred following questions of law for the opinion of a Full Bench —

(1) Whether there is power to suspend an arm s licence pending enquiry into its cancellation or suspension?

(2) Whether in view of the statutory provisions is it incumbent upon the authorities to afford an opportunity of hearing prior to suspension pending enquiry?"

And this is how the matter has come up before us

2. It is apparent that the second question mentioned above would arise for consideration only if the first question is answered in the affirmative In order to answer the first

question it will be necessary to determine the nature of the enquiry which a licensing authority is, under the provisions of Section 17 of the Arms Act 1959 (hereinafter referred to as the Act) expected to conduct before ordering cancellation or suspension of an arms licence.

3. Sub-sections (3) and (5) of Section 17 of the Act which are relevant for our purpose read thus —

(3) the licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence —

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act, or

(b) if the licensing authority deems it necessary for the security of the public peace or public safety to suspend or revoke the licence, or

(c) if the licence was obtained by suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it, or

(d) if any of the conditions of the licence has been contravened, or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver up the licence.

(5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same, unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement."

4. Sub-section (1) of Section 18 of the Act then provides that any person aggrieved by an order of the licensing authority suspending or revoking a licence may prefer an appeal against that order to such authority (referred to as the appellate authority) and within such period as may be prescribed. Sub-section (5) of Section 18 after stating that in disposing of an appeal the appellate authority shall follow such procedure as may be prescribed, provides that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

5. A perusal of abovementioned provisions indicates that the licensing authority has been given the power to suspend or revoke an arms licence only if any of the conditions mentioned in sub-clauses (a) to (e) of sub-section (3) of Section 17 of the Act exists. Sub-section (5) of Section 17 makes it obligatory upon the licensing authority to while passing the order revoking/suspending an arms licence record in writing the reasons therefor and to on demand furnish a brief statement thereof to the holder of the licence unless it considers that it will not be in public interest to do so. According to this section the state for recording of the reasons for cancelling or suspending an arms licence is reached only when such an order is made and not before it. A brief statement of such reasons is to be communicated to the licensee only if

(i) the licensee asks for it, and

(ii) the licensing authority does not consider disclosure of such reasons to be against public interest.

The provisions that the reasons for revocation/suspension of an arms licence is to be recorded when the licensing authority makes the order and that a brief statement thereof is to be communicated only if the licensee demands it and that too only where the licensing authority does not consider disclosure of such reasons to be against public interest, makes the legislative intention that, if at all, the licensing authority is obliged to communicate to the licensee the grounds for revocation/suspension of the licence only after the order for revocation/suspension has been made absolutely clear. This provision rules out any obligation on the part of the licensing authority to before making such order communicate the grounds for revoking or suspending the licence to the licensee. Accordingly placing of any obligation on the licensing authority to notify the grounds for revoking or suspending the licence to the licensee before the order for revocation or suspension of the licence is made, would result in forcing the licensing authority to do something which the statute

does not oblige it to do Such compulsion flowing from any source whatsoever would not be in consonance with the provisions contained in Section 17 of the Act

6. The submission that even though the section while enabling the licensing authority to revoke/suspend an arms licence does not specifically provide for affording of an opportunity to the licensee to show that the grounds mentioned in sub-section (3) of Section 17 do not exist the licensing authority is according to the principles of natural justice, obliged to afford such an opportunity does not appeal to us It is now well settled that rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights Their aim is to secure justice or to prevent miscarriage of justice They do not supplant the law but supplement it If a statutory provisions can be read consistently with the principles of natural justice the courts should do so But if a statutory provisions either specifically or by necessary implication excludes application of any rule of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into a concerned provisions the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power (See the case of Union of India v J N Sinha, AIR 1971 SC 40)

7 In the instant case, as has already been pointed out, the statutory provisions contained in Sec 17(S) of the Act would not be compatible with the principles of natural justice relied upon by the learned counsel for the licensee In our opinion the statutory provisions contained in Sec 17 of the Act by necessary implication exclude the applicability of the said rule of natural justice till the stage the licensing authority makes an order for revocation/suspension of an arms licence

8 Again, a reading of the provisions contained in Sections 17 and 18 of the Act as forming part of one integrated scheme clearly brings out that the licensee is afforded ample protection when the statute obliges the licensing authority to give reasons for revoking/suspending a licence in writing and thereafter afford him an opportunity to be heard by the appellate authority on all relevant aspects of the matter It is evident that having regard to the fact that licences involved in such cases are in respect of dangerous weapons, the legislature in its wisdom thought that an opportunity of being heard should be afforded to the licensee at a stage following suspension/revocation of the licence and not prior to it Thus the legislature has in its own way specified the stage at which the principles of natural justice are in such cases to become applicable and has thereby ruled out the application of such principles at any other stage

9 It is true that in order to revoke/suspend an arms licence the licensing authority has necessarily to come to the conclusion that facts justifying revocation/suspension of licence mentioned in grounds (a) to (e) of Section 17 exists However the section nowhere lays it down that before coming to such a conclusion the licensing authority should either hear the licensee or hold a formal enquiry The licensing authority may on certain information being laid before it for its own satisfaction proceed to hold an enquiry with a view to find out if the conditions for revoking/suspending the arms licence exist and, as already explained, it would, in such enquiry not be necessary for the licensing authority to associate the licensee and the licensee cannot claim it as of right (statutory or that based on principles of natural justice) that he must be heard and be given an opportunity to place his version of the case before the licensing authority We are in this view supported by a Division Bench decision of Calcutta High Court in the case of Sudhir Chandra Ghosh v The A D M 24 Parganas AIR 1980 Cal 275

10. In support of his submission that the licensing authority is while proceeding to revoke or suspend an arms licence, bound to act in accordance with the principles of natural justice, learned counsel for the licensee strongly relied upon a Division Bench decision of this Court in the case of State of U P through Secy Home Department Lucknow v Jaswant Singh Sarna AIR 1968 All 383 In that case this Court was concerned with the question as

to whether before refusing to grant or renew a licence under Section 14 of the Arms Act it was obligatory upon the licensing authority to follow the principles of natural justice and to afford an opportunity to the applicant for the grant/renewal of the licence to be heard. This Court eventually came to the conclusion that while considering such an application the licensing authority is obliged to act judicially and it is necessary for it to afford an opportunity to the applicant before refusing to grant/renew his licence Learned counsel for the licensee contended that as the procedure prescribed for considering an application for grant/renewal of an arms licence under Section 14 of the Act is identical with that prescribed for revocation/suspension of an arms licence under Section 17 of the Act and the two provisions are in pari materia, it must be held that while revoking/suspending an arms licence under Section 17 of the Act as well, the licensing authority is obliged to act judicially and to follow the principles of natural justice

11 It is no doubt true that there is considerable similarity in the procedure prescribed for consideration of an application for grant/renewal of an arms licence as laid down in Section 14 and that for its revocation/suspension laid down in Section 17 of the Act But then the Division Bench itself has in the case of State of U P v Jaswant Singh Sarna (AIR 1968 All 383) (supra) made following observations in paragraph 9 of the judgment —

We may now consider the merits of the question raised before us while doing so we may point out that we are concerned essentially with section 14 (1) (b)(i) by reference to which the respondent has been denied renewal of his licences."

and thereafter it went on to observe in paragraph 14 of the judgment —

It is said that a threat to the security of the public peace and public safety may arise rendering it necessary to exclude a hearing to the applicant before a licence is refused. That argument can be appreciated when it is raised in respect of the suspension or revocation of a licence But when it is sought to be employed in respect of the grant or refusal of a licence it is not intelligible Until a licence is granted there is no right to the possession of fire arms and ammunition or to a business in them We find it difficult to comprehend how the public peace or public security can be endangered merely because there is an application for the grant of a licence

12 It thus appears that notwithstanding the apparent similarity in the provisions contained in sections 14 and 17 of the Act the Bench clearly brought it out that different considerations may prevail while interpreting the two provisions. Accordingly we are unable to project the ratio of the decision in State of U P v Jaswant Singh Sarna's case (supra) while considering the scope and ambit of the provisions contained in Section 17 of the Act

13 Learned counsel for the licensee further relied upon the decisions in the cases of Jai Narain Rai v District Magistrate, Azamgarh AIR 1966 All 265 Dr Harisingh Harnamsingh Khalsa v E. F Deboo AIR 1969 Guj 349 Digambar Panda v Addl District Magistrate, Dhenkanal, AIR 1970 Orissa 110 Kukkila Narainа Naik v Addl District Magistrate, AIR 1971 Ker 162 and Labha Singh Chattar Singh v The Divisional Commr Ambala Division Ambala, AIR 1972 Punj and Har 122 wherein it has been held that the licensing authority is, before making an order revoking/suspending an arms licence under Section 17(3) of the Act, bound to follow the principles of natural justice and to afford an opportunity to the licensee to place his case before it It is significant to note that in all these cases the courts have proceeded on the basis that revocation or suspension of arms licence affects the rights of a licensee and that in such cases the principles of natural justice require that the licensee should be heard before any order adverse to him is made However the aspect which has weighed with us in coming to the conclusion that the statutory provisions contained in Section 17 of the Act rule out the applicability of the principles of natural justice at the stage of passing of the said order was neither noticed nor discussed in any of these cases. We are accordingly of opinion that aforementioned decisions cited by learned counsel for the licensee are not helpful in determining the true nature and scope of the provisions contained in Section 17 of the Act

14 The object of the enquiry that a licensing authority may while proceeding to consider the question as to whether or not an

arms licence should be revoked or suspended, like to make clearly is to enable the licensing authority to come to a conclusion as to whether or not the facts stated in clauses (a) to (e) of Section 17(3) exist and as already explained it is not obliged to before considering that a case for revocation/suspension of licence has been made out associate the licensee in such enquiry In this view of the matter it can safely be taken that where a licensing authority embarks upon such an enquiry it is, till then not convinced about existence of the conditions mentioned in clauses (a) to (e) of Section 17(3) of the Act So long as it is not so convinced no case to make an order either revoking or suspending an arms licence as contemplated by the section will be made out

15 Viewed in this light the scope of the first question referred to us seems to be whether the licensing authority in a case where it is proceeding to enquire into the existence of the facts justifying making of an order for revocation/suspension of an arms licence it is open to it to suspend the licence pending such enquiry and before it has formed an opinion with regard to existence of such facts

16. Clearly Section 17 of the Act does not in so many words empower the making of an order for suspension pending enquiry into existence of the facts justifying making of the order for revocation/suspension on grounds mentioned in Section 17(3) of the Act There is also no specific provision in the Arms Act empowering the licensing authority to suspend an arms licence pending such enquiry The question that arises for consideration is whether having regard to the nature of the enquiry that the licensing authority is expected to make can it be said that power to suspend the licence pending such enquiry inheres or is implied in the power conferred upon the licensing authority by Section 17 of the Act

17 On behalf of the State existence of such a power to suspend an arms licence during pendency of the enquiry is sought to be made out on following grounds

1 Unless such a power is assumed to exist in the licensing authority it may not be possible to in cases of urgency secure public peace and safety Thus the very object for which the provisions contained in the Act have been enacted may get defeated, and

2 that such a power is to be regarded as inherent/incidental power of the licensing authority

18. So far as the first ground mentioned above is concerned, learned counsel for the State contended that one of the main objectives sought to be achieved by revocation/suspension of an arms licence is to secure public peace and safety In case the licensing authority is not enabled to suspend the licence during pendency of the enquiry public peace and safety may during such enquiry get disturbed It would, in the circumstances, be reasonable to recognise a power in the licensing authority to suspend an arms licence pending enquiry We are unable to accept this submission As already explained if there already is material before the licensing authority and it becomes apparent to it that possession of arms by the licensee is going to endanger public peace and safety it can straightway and without holding any enquiry proceed to revoke/suspend the arms licence after recording reasons therefor and if the licensee is aggrieved by such orders, he will have a right to ventilate his grievance before the appellate authority However if there is no such material before the licensing authority and it is not apparent to it that there is an immediate danger to public peace and safety and it, on some information being laid before it, proceeds to find out whether there is any likelihood of public peace and safety being affected at some future date, it cannot be said that there is any such urgency so as to justify the revocation/cancellation of the licences even before the licensing authority gets so satisfied In the circumstances, considering the nature and the object of the enquiry which a licensing authority is required to make for finding out if the facts justifying passing of an order for revocation/suspension of licence exist, it cannot be said that non conferment of the power to suspend an arms licence pending enquiry has the effect of defeating the object for which such a power has been conferred upon the licensing authority

19 We now proceed to consider the next submission made by learned counsel for the State, namely that it should be taken that the power to suspend an arms licence pending enquiry is countenanced by the Act inasmuch as such a power inheres in the licensing

authority and at any rate such a power is to be regarded as a power incidental to or implied in the power conferred upon the licensing authority.

20. In regard to revocation/suspension of an arms licence the power and duties of the licensing authorities are regulated and are limited by the statutory provisions contained in Section 17 of the Arms Act and as per following observation made by the Supreme Court in the case of Sub-Divisional Officer v S N Singh, AIR 1970 SC 140 it cannot be said that such a power inheres in it —

The Gaon Sabha is the creature of a statute Its powers and duties as well as the powers and duties of its officers are all regulated by the Act Hence no question of any inherent power arises for consideration

The other submission that such a power to suspend an arms licence pending enquiry can be justified as a power incidental to the power conferred by Section 17 of the Act also does not appeal to us In the first place the question whether in the absence of a provision like the one contained in Section 19 A of the U P General Clauses Act (which specifically provides that where a U P Act confers a power it will be deemed that all incidental powers for exercising that power have also been conferred) in the Central General Clauses Act which governs the Arms Act, any incidental power can be read in the statute become debatable However without expressing any concluded opinion on this point, we proceed to consider that question on the footing that where a statute confers a power it should also be taken to have conferred all other incidental powers as well. We find that the question with regard to ambit of the power that can be regarded as incidental for proper exercise of statutory powers has also been considered by the Supreme Court in the case of Sub-Divisional Officer v S N Singh AIR 1970 SC 140 wherein it has made the following observations —

"It is well recognised that where an Act confers a jurisdiction it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution But before implying the existence of such a power the court must be satisfied that the existence of that power is absolutely essential for the discharge of the power conferred and not merely that it is convenient to have such a power We are not satisfied that the power to place under suspension an officer is absolutely essential for the proper exercise of the power conferred under S 95(1)(g) It cannot be said that the power in question cannot be properly exercised without the power to suspend pending enquiry The mere possibility of interference with the course of enquiry or of further misuse of powers are not sufficient to enlarge the scope of a statutory power If it is otherwise the mere power to punish an offender would have been held sufficient to arrest and detain him pending enquiry and trial There would have been no need to confer specific power to arrest and detain persons charged with offences before their conviction

21 It is thus evident that before a power can be implied as an incidental power the Court has to be satisfied that existence of such power is absolutely essential for the discharge of the power conferred and not merely that it is convenient for its exercise In our opinion, it can neither be said that the power to suspend an arms licence pending an enquiry of the nature that a licensing authority may like to make before ordering revocation/suspension of the arms licence is absolutely necessary nor can it be said that the power to revoke/suspend a licence in the circumstances mentioned in Section 17 of the Act cannot be exercised unless a power to suspend the licence pending enquiry is also conceded to the licensing authority

22. In the result we are of opinion that having regard to the scheme and purpose of the provisions contained in Sections 17 and 18 of the Act and the nature of the enquiry that a licensing authority is to make before directing revocation/suspension of an arms licence it has no power to suspend the arms licence pending enquiry into its cancellation/suspension The first question referred to us is accordingly answered in the negative In view of our answer to the first question the controversy sought to be resolved by the second question does not arise for consideration and it is not necessary to answer the same

23. Let this and other connected cases shown in the cause list along with our opinion

(be placed) before the concerned Bench for passing appropriate orders

Order accordingly

1986 ALL. L. J 335

S K DHAON J

M/s Chandra Shekhar Shashi Shekhar Petitioner v State of U P and others Respondents

Civil Misc Writ Petn. No 514 of 1982 D/ 24-9 1985

U P Sugarcane (Purchase Tax) Act (9 of 1961), S 3(1)(b) — U P Sugarcane (Purchase Tax) Rules (1961), R. 13A(1) — Exercise of option of being taxed on assumed basis — Initially, intimation as to functioning of two crushers in the season, given — Subsequent intimation as to functioning of one crusher only, given 15 days before date of commencement of unit — Second declaration is operative declaration

The petitioner was a unit within the meaning of the Act. It exercised an option of being taxed on the purchases of sugarcane made by it on assumed basis In compliance with Rule 13A(1) on 25th Nov 1981 it submitted a declaration in Form XIII stating therein that unit would commence functioning from 4th Jan 1982 It was also indicated therein that the two crushers installed in the unit would function On 2nd Dec 1981 the petitioner made a fresh declaration in Form XIII stating therein that the crusher would commence functioning from 4th Jan 1982 However it made it clear that during the current crushing season only one of its crushers would be used Despite this was proved the petitioner was called upon to pay the tax on the footing that both the crushers worked and it deposited the amount Thereafter it made an application to the appropriate authority praying that the excess amount may either be refunded to it or necessary adjustments may be made towards the tax which the petitioner was liable to pay in future

Held, claim of the petitioner should be allowed. Before the declaration given on 25th Nov 1981 became effective the petitioner gave a fresh declaration on 2nd Dec 1981 In both the declarations the date fixed for the commencement of the crushing operation was 4th Jan 1982 The first declaration remained a mere proposal as before the due date, namely 15 days before the date specified, viz 4th Jan 1982 a fresh declaration was given Therefore in the eye of law the declaration which was effective for the purposes of the exercise of option by the petitioner was the declaration given on 2nd Dec. 1981 1980 Tax LR 1627 (All) (FB) Disting (Para 4)

Cases Referred Chronological Paras

1980 Tax LR 1627 1980 UPTC 64 AIR 1980 NOC 68 (All) (FB) 3

Rasul Hasan Zaidi, for Petitioner Standing Counsel for Respondents

ORDER — The petitioner invokes the jurisdiction of this Court under Art 226 of the Constitution and prays that the orders passed by the authorities below refusing to accede to its request to adjust the excess payment made by it towards purchase tax may be quashed

2 The petitioner is a unit within the meaning of the U P Sugarcane (Purchase Tax) Act 1961 (hereinafter referred to as the Act) It exercised an option of being taxed on the purchases of sugarcane made by it on assumed basis In compliance with R 13A(1) of the Sugarcane Purchase Tax Rules 1961 (hereinafter referred to as the Rules) it had on 25th Nov 1981 submitted a declaration in Form XIII stating therein that unit would commence functioning from 4th Jan 1982 It was also indicated therein that the two crushers installed in the unit would function On 2nd Dec 1981 the petitioner made a fresh declaration in Form XIII stating therein that the crusher would commence functioning from 4th Jan 1982 However it made it clear that during the current crushing season only one of its crushers would be used It is not disputed that the petitioner in fact used only one crusher This is evident from the fact that on inspections made on several occasions only one crusher was found working Despite this the petitioner was called upon to pay the tax on the footing that both the crushers worked and it deposited the amount Thereafter it made an application to the appropriate authority praying that the excess amount may either be refunded to it or

necessary adjustments may be made towards the tax which the petitioner was liable to pay in future This application was rejected by the Assessing Authority by an order dt. 30th Jan 1982 The Appellate Authority on 11th Mar 1982 dismissed the appeal of the petitioner and confirmed the order of the Assessing Authority These orders are the subject matter of this writ petition

3. The authorities below have proceeded on the assumption that the declaration given by the petitioner on 25th Nov 1981 with respect to the number of crushers to be used by it during the current year became sacrosanct and could not be changed by the petitioner under any circumstances It appears that the authorities have taken this view on account of a decision given by this Court which is reported in 1980 UPTC 64 (1980 Tax LR 1627) Incidentally this happens to be a Full Bench decision of this Court Having considered the facts of the instant case and having read and re-read the Full Bench decision, I am of the opinion that the authorities have clearly misread and misapplied the decision of this Court. In the Full Bench case the owner of the unit concerned had given a declaration that the unit would commence functioning on a specified date At that stage the owner of the unit concerned had three licences for three different crushers. The number of crushers to be used was not at all specified in the declaration. The crushing of the sugarcane commenced on the specified date Thereafter during the course of the crushing season, an information was given by the owner of the unit that on account of some mechanical defect in some crushers the number of crushers to be used would stand reduced. This Court took the view that the declaration having become effective in so far as the unit there having commenced crushing sugarcane from the specified date, the change in the number of crushers to be used during the course of crushing season was not permissible under the statute

4. So far as the present case is concerned, the facts are entirely different. As already stated, before the declaration given on 25th Nov 1981 became effective the petitioner gave a fresh declaration on 2nd Dec 1981 It is to be remembered that in both the declarations the date fixed for the commencement of the crushing operation was 4th Jan. 1982 The first declaration remained a mere proposal as before the due date, namely 15 days before the date specified, viz 4th Jan 1982 a fresh declaration was given Therefore in the eye of law the declaration which was effective for the purposes of the exercise of the option by the petitioner was the declaration given on 2nd Dec 1981

5 The order dt. 30th Jan 1982 passed by the Assessing Authority as well as the order dt 11th March 1982 passed by the Appellate Authority are quashed. The respondents are directed to either refund the excess payment made by the petitioner towards the tax on the footing that the second crusher too had worked or make the necessary adjustment towards the payment of the tax for which the petitioner may be liable in future There shall be no order as to costs

Petition allowed

1986 ALL. L. J 336

N N SHARMA, J

Ganga Din, Applicant v The State, Opposite Party

Criminal Revn No 2335 of 1982 D/ 24-9-1985 *

(A) Arms Act (54 of 1959), Ss 5, 2(c), 2(e) — Licence for manufacture of fire arms etc. — Obligation of obtaining licence applies not only to a complete arm but even to an arm which is in the process of manufacture (Para 17)

(B) Criminal P C (2 of 1974), S 464 — Arms Act (54 of 1959), S 25 — Conviction under S 25, Arms Act — Non-specification of all articles recovered from accused in charge — No prejudice caused to accused by non specification — Conviction cannot be faulted. (Paras 21, 22)

Cases Referred Chronological Paras

(1906) 2 KB 352 75 LJKB 741 95 LT 530
McNocol v Pinch 13

*Against judgment and order of Parduman Kumar 7th Addl S J (Higher Criminal Court) Budaun, D/ 11 10-1982

LC/AD/G867/85/VG

Keshav Sahai for Applicant Addl Govt Advocate for Opposite party

ORDER — This revision is directed against order dt 11 10 1982 by Sri Parduman Kumar learned VIIth Additional Sessions Judge (Higher Criminal Court) Budaun who partly allowed Criminal Appeal No 211 of 1982 While upholding the conviction of revisionist under S 25 of Arms Act, he reduced his sentence of one year rigorous imprisonment to nine months rigorous imprisonment The conviction and sentences were initially recorded by Sri Virendra Singh learned IInd Additional Munsif Magistrate Budaun in Case No 935 of 1981 on 14 7 1982

2. Prosecution case briefly stated was that on 25-6 1981 at about 3 30 p m Sri Santosh Kumar Bhardwaj (P W 1) S O Hazratpur district Budaun had an information by informer that the revisionist was manufacturing illicit pistols and guns On this information S O Sri Santosh Kumar Bhardwaj along with Constables Mangal Sen (P W 3) Prakash Chandra Tyagi Rajendra Singh and Chandra Pal Singh raided the house of revisionist in village Gauntra and found the revisionist rubbing the barrel of a pistol on vice Bank to bring it to size He was surrounded out numbered and overpowered. Country made pistol of twelve bore (Ext 26) from his left hand and file (Ext 31) from his right hand were recovered Two triggers Exts. 1 and 2 two bodies of pistol Ext 3 and 4 two ejected cartridges Exts 5 and 6 two discs Exts 7 and 8 one body of revolver Ext 9 one live cartridge 12 bore Ext. 10 and other Exts. total number 31 were also recovered from that place as detailed in memo Ext Ka 1 which were sealed on the spot and duly attested by witnesses

3 Revisionist was marched to police station and after the report was scribed by Constable Ram Naresh (P W 4) revisionist was sent up by Investigating Officer Sri S S Chauhan (P W 3) after procuring necessary sanction for the prosecution from District Magistrate.

4 Prosecution examined four witnesses in support of their case Eye-witnesses, who testified the recovery aforesaid and identified the articles given above are Santosh Kumar Bhardwaj (P W 1) and Mangal Sen (P W 3) while the two other witnesses are formal

5 In his statement accused revisionist denied the aforesaid recovery and did not adduce any evidence in defence

6. Both the courts below believed the P Ws and recorded the conviction and sentence aforesaid. Aggrieved by this decision this revision has been preferred

7 I have heard Sri Keshav Sahai learned Advocate for revisionist at great length and Sri N S Kulshrestha, learned A.G A

8. On behalf of revisionist, it was pointed out that the sanction (Ext Ka-4) for prosecution of the revisionist was held invalid by the learned trial Magistrate on the ground that the empty cartridges were not mentioned in the said sanction by District Magistrate which was indicative of non application of mind and consequently no conviction under S 8 of Arms Act could be recorded. However such sanction was not obligatory to bring home the charge under S 25 read with S 5 of Arms Act Section 5 of Arms Act (Act No 54 of 1959) which was operative at the time of commission of offence read as below —

5 Licence for manufacture sale etc of arms and ammunition — No person shall—

(a) manufacture sell transfer convert repair test or prove or

(b) expose or offer for sale or transfer or have in his possession for sale transfer conversion repair test or proof

any firearm or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder)

9 Arm has been defined in S 2(c) as below —

"arms means articles of any description designed or adapted as weapons for offence or defence, and includes firearms, sharp-edged and other deadly weapons, and parts of and machinery for manufacturing, arms but does not include articles designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys

or of being converted into serviceable weapons

10. Firearm has been defined in S 2(e) of the aforesaid Act as below —

firearm" means arm of any description designed or adapted to discharge as projectile or projectiles of any kind by the action of any explosive or other forms of energy and includes

11. Thus the argument developed was that Sec 5 of the aforesaid Act which obligates a licence for manufacturing of firearm etc is applicable only to a complete arm or finished object and not to an arm in the process of manufacture

12. The word manufacture has not been defined in the aforesaid Act. However it has been defined in S 5(b) of Explosive Act 1984 (Act. No IV of 1984) in the following words —

(b) manufacture in relation to an explosive includes the process of —

(1) dividing the explosive into its component parts or otherwise breaking up or unmaking the explosive or making fit for use and damaged explosive and

(2) remaking altering or repairing the explosive

13. In Stroud's Judicial Dictionary Fourth Edition at page 1620 the meaning of word manufacture is as below —

"Manufacture (1) The word manufacture in the Statute of Monopolies (21) Jac 1 C 3) must be construed in one of two ways It may mean the machine when completed, or the mode of constructing the machine" (per Parke B Morgan v Seaward, 6 L J Ex 156) 'The word manufacture said Abbott, C J in R v Wheeler (2B Ald 349) has been generally understood to denote, either a thing made which is useful for its own sake and vendible as such, as a medicine a stove, a telescope, and many others or to mean an engine or instrument or some part of an engine or instrument to be employed either in the making of some previously known article, or in some other useful purpose, as a stocking frame, or a steam engine for raising water from mines or it may perhaps extend also to a new process to be carried on by known implements or elements acting upon known substances and ultimately producing some other known substance but producing it in a cheaper or more expeditious manner or of a better or more useful kind No mere philosophical or abstract principle can answer to the word manufactures Something of a corporeal and substantial nature — something that can be made by man from the matters subjected to his art and skill, or at the least some new mode of employing practically his art and skill, is required to satisfy the word

X X X X X

(5) to manufacture a thing is to bring it into being (per Bray J) and semble is synonymous with to MAKE" and at least the two verbs were used synonymously in Finance Act 1901 (c)(7) 55 and therefore saccharine of greater (or different?) strength which was evolved from other saccharine was not manufactured or made within the section Mc Nicol v Pinch (1906) 2 K. B 352 See also British Sugar (Subsidy) Act, 1925 (c 12) S 6

14 Webster Comprehensive Dictionary (Encyclopaedic Edition) page 776 manufacture means —

Manufacture In make or fashion by hand or machinery especially in large quantities 2 To work into useful form, as wood or steel 3 To create by artifice invent falsely concoct 4 To produce in a mechanical way as art, poetry etc See Synonyms under MAKE. PRODUCE— n. 1 The production of goods by and or by industrial art or processes 2 Anything made by industrial art or processes manufactured articles collective. 3 The making or contriving of anything "

15. Oxford English Dictionary Vol. I, page 1203 gives the following meaning of manufacture —

Manufacture — The action or process of making by hand, BACON b The making of articles or material (now on a large scale) by physical labour or mechanical power c A branch of productive industry d In depreciatory sense production of a merely mechanical kind. Also applied e g to literary work, or to the fabrication of false statements on a large scale for the market 2 a. A person's handi physical labour or machinery 3 Working with the hands a manual occupation, handicraft 4 A manufacturing establishment or business "

16 Murray in his A New English Dictionary on Historical Principles, Vol. M page 143 gives the following meaning of manufacture —

a. The action or process of making by hand 1605 BACON Adv Learn I vi, 2 It is not set down that God said, Let there be heaven and earth, but actually that God made heaven and earth the one carrying the style of a manufacture and the other of a decree
b The action or process of making articles or material (in modern use on a large scale) by the application of physical labour or mechanical power

17 Thus a mere look at the aforesaid definitions of arm and sections of the Arms Act aforesaid and the meaning of the word manufacture as given in the aforesaid dictionaries means the process of making any fire-arm etc It does not mean merely a finished product or a complete arm and so the aforesaid contention of learned counsel for the revisionist that the conviction was not sustainable as the barrel of the pistol was not a working firearm falls to the ground

18. The next contention was that no charge was drawn by learned Magistrate under Sec 25 of Arms Act read with S 5 of aforesaid Act Recovery of cartridges and pistols only were mentioned in the charge but it was not laid that the accused was found manufacturing any arm or fire-arms and under such circumstances no conviction was sustainable without amendment of the charge Further it was argued that even in the question No 1 formulated under S 313 Cr P C the revisionist was accused of manufacturing the fire-arm but the aforesaid articles recovered from his possession were not specified in the question so he has been prejudiced by this omission which vitiates the trial

19 I have carefully considered all these contentions which are devoid of force

20. Section 464 Cr P C (Act No 2 of 1974) reads as below —

464 (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground of any error omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby

21 Thus it is obvious that all such irregularities have been made curable so that form may not override the substance There is nothing on record to show that the revisionist has been prejudiced in any manner by non specification of all the aforesaid articles in the charge In the questions formulated under S 313 Cr P C he had an ample opportunity to know the precise accusation and so it cannot be said that he has been prejudiced in any manner by the aforesaid omission

22. A mere look at S 25 of Arms Act under which the revisionist was charged, shall go to disclose that the aforesaid section punishes manufacturing repairing etc of any arm or ammunition in contravention of S 5 of the aforesaid Act. While referring the definitions of arm and fire-arms in S 5 aforesaid, it has been shown that even any part of the fire-arm falls well within the aforesaid definitions to expose the revisionist to the aforesaid penalty There is evidence of eye-witnesses believed by the courts below that accused was engaged in bringing the barrel of the pistol to size at the time of his apprehension So many articles were recovered from his possession which fully corroborated the testimony of P Ws Under such circumstances the aforesaid conviction cannot be faulted

23 As regards the sentence, it cannot be regarded as excessive by any stretch of imagination However as the revisionist has already been in jail for about three months pending the trial and this revision the said period shall be deducted and he will have to serve the remainder sentence of six months rigorous imprisonment more With these observations the revision is dismissed.

24. Thus the conviction and sentence of revisionist are affirmed Ad interim order dt 17 12 1982 is vacated

25. Let revisionist surrender to his bonds and be taken into custody forthwith to serve out the remainder sentence of six months rigorous imprisonment

26. Send the record to the court concerned at the earliest

Revision dismissed.

1986 ALL. L. J 340

N N SHARMA J

Dina Nath. Appellant v Deo Narain and others Respondents

Second Appeal No 1840 of 1974 D/ 16-9 1985

U P Consolidation of Holdings Act (5 of 1954), S 54 — U P Consolidation of Holdings Rules (1954), R 14 — Consolidation proceedings — Compromise decree — One of the Party to compromise, minor — Legal guardian not appointed for him — Compromise is rendered void and decree, nullity

Where during the minority of the plaintiff during consolidation proceedings no legal guardian was appointed by the consolidation authorities concerned and proceedings resulted into a compromise decree non observance of R 14 rendered the compromise void and compromise decree a nullity Case-law discussed. (Para 22)

Cases Referred	Chronological	Paras
1975 Rev Dec 274		14
AIR 1971 All 352		20
1970 All LJ 288	1970 All WR 78	18
1969 Rev Dec 235		18
AIR 1968 SC 954		21
AIR 1964 SC 907		17
AIR 1962 Andh Pra 479 (FB)	1962 (2) Cn LJ 727	17
AIR 1956 Mad 89		19

Radha Krishna, for Appellant C B Misra, for Respondents

JUDGMENT — This is a plaintiff's appeal directed against the judgment and decree of Sri O N Asthana, Judge Small Cause Courts (Civil Judge) Allahabad dt. 25 3-1984 who allowed Civil Appeal No 418 of 1973 and dismissed the plaintiff's suit No 502 of 1970 with costs.

2. Judgment and decree of trial court dt 17 8-1973 who had decreed the suit with costs was reserved.

3. Unfortunately the record of the trial court which contained the file of Consolidation Court also could not be available as it has been burnt up in a fire in the Record Room of Collectorate. Allahabad. Parties filed copies of written statement compromise etc along with their affidavit and counter affidavit

4 Dispute relates to agricultural plots situated in village-Supra Bari Pargana-Sikandra. District Allahabad

5 Relief sought was for setting aside the compromise and orders dt 22 9 1967 and 16-10 69 of the Consolidation Court and for recovery of possession over the properties

6 Plaintiff is Dina Nath appellant Defendant 3 is Prasidh Narain elder brother of plaintiff Their mother is Smt Chameli, P W 1 Main contesting defendant 1 is Deo Narain, a collateral of Dinanath

7 Plaintiff was minor during the consolidation proceeding No 3157 (year not noted) vide Annexure II appended to the affidavit of Dinanath plaintiff Those proceedings resulted in compromise decree on the basis of composition dt 22 8-67 (vide Annexure-II) aforesaid. Plaintiff alleged that the said compromise was obtained by defendant 1 in collusion with defendant 3 by which Sirdari rights of plaintiff in plots Nos 52 629 and 630 were given to defendant 1 who had no right, title or interest in it No legal guardian was appointed on behalf of the minor to enter into such compromise Plaintiff never consented to that compromise but his appeal failed on a technical ground, hence this suit

8. Claim was resisted on the ground that plaintiff and defendant No 3 were co-tenants in the disputed holding defendant had not committed any fraud and permission to file the compromise was obtained from Consolidation Officer The claim was also barred by limitation. The suit was barred by Ss 5 10 11 49 of U P Consolidation of Holdings Act

9 Both the courts below found that the suit was not barred by Ss 5 10 11 49 of U P Consolidation of Holdings Act. Both the courts further found that plaintiff's natural guardian Smt Chameli, P W 1 was not appointed as legal guardian by the Consolidation Authorities Such appointment was not available on the record. Learned Trial Court further found that Deo Narain defendant 1 was never in possession over the disputed plot

nor there was any entry in Khasra or Khatauni in his favour so far as disputed holding was concerned. The A. C O did not follow the procedure laid down under R 14 of U P Consolidation of Holdings Rules framed under the U P Consolidation of Holdings Act (Act No 5 of 54) as amended uptodate So the compromise was not only illegal but a nullity and so was cancelled

10. Learned appellate court found that in the compromise arrived at amongst the parties there were several cases and so the parties mutually adjusted their disputes irrespective of rights and interest of the parties in each agricultural holding The compromise has not prejudiced the plaintiff's interest and so there was no sufficient cause to set aside the compromise In the result the appeal was allowed as given above

11 Aggrieved by that decision this appeal has been filed.

12. I have heard learned counsel for the parties and perused the record

13. The simple point which falls to be considered in this appeal is whether non observance of the procedure of R 14 of U P Consolidation of Holdings Act has rendered the compromise void. R 14 aforesaid reads as below —

14 Section 54(1) The Assistant Consolidation Officer shall in consultation with the Consolidation Committee appoint guardians for purposes of proceedings under the Act, of such tenure-holders who are minors, idiots or lunatics unless such guardians have been already appointed by order of a competent Court

(2) The guardian appointed for a minor idiot or lunatic under sub-rule (1) shall be natural guardian unless the natural guardian possesses an interest adverse to the interest of the minor the idiot or the lunatic. If the natural guardian is not so appointed, the Asstt Consolidation Officer shall record reasons therefor and shall then appoint the nearest male relative of the minor the idiot or the lunatic, not possessing an interest adverse to him as his guardian

(3) A list of all such guardians together with the names of their wards shall be published in the village and any person interested in the ward may file an objection against such appointment before the Consolidation Officer within fifteen days of such publication whose orders shall subject to the modification if any made by orders passed under S 48) be final

14 On behalf of the respondent learned Advocate pointed out that this Rule was not mandatory Its non observance did not render compromise decree nullity In this connection reliance was placed upon Mukund Ram v Asstt Director of Consolidation reported in 1975 Rev Dec 274 which posited —

It was contended that R 14 of the Rules framed under the Act enjoins upon the Asstt Consolidation Officer to appoint a legal guardian for purposes of proceedings under the Act of such tenure-holders who are minors and whose guardians have not been appointed by an order of a competent court.

HELD Assuming it for the petitioner that this rule was not complied with it does not introduce an illegality in the proceeding itself more so when the minor was represented by a member of his family Moreover R 14 applies only to cases of recorded tenure-holders and not to cases where a person is claiming mutation of his name over the holding At any rate non compliance of the Rule is only an irregularity and does not vitiate the proceeding in law

15 It appears that in that case the petitioner s name was not recorded as a tenure-holder but he sought mutation of his name over that holding in his capacity as heir of Smt. Gaya Kunwar Opposite party contested the claim on the ground that Karuna Shanker was adopted son of Smt Gaya Kunwar and so his contention was upheld by the courts below

16. The contention of petitioner that R 14 aforesaid was not observed was repelled on the ground that minor was represented by a member of his family and name of petitioner was not entered over the disputed holding as a tenure-holder and so non-compliance of that Rule was only an irregularity

17. Learned counsel for the respondent also relied upon Ittyavira Mathai v Varkey Varkey reported in AIR 1964 SC 907 In that case a decree was passed by the court in a suit

barred by time It was held that the decree was not a nullity where a court having jurisdiction to decide the matter wrongly or rightly decides it wrongly There was no inherent lack of jurisdiction. In support of the same assertion Public Prosecutor Andhra Pradesh v Devireddi Nagi Reddi reported in AIR 1962 Andh Pra 479 (FB) was also cited None of these cases is in point

18. In the instant case there is no order of appointment of guardian by Assistant Consolidation Officer Admittedly Prasidh Naram was not natural guardian of the minor at the time of filing the compromise He was simply a de facto guardian who had no right to transfer the property of minor to Deo Naram as was held in Mohd. Sohrab Khan v Dy Director of Consolidation of Ghazipur reported in 1970 All WR 78 (79) (1970 All LJ 288) In that case also a de facto guardian of a Hindu minor had transferred the share of a minor in agricultural land It was held that such transfer was void and violated Ss 8 and 11 of Hindu Minority and Guardianship Act, 1956 Such compromise without permission to compromise the sale by the legal guardian was not given effect to vide Manzoor v Jamaluddin reported in 1969 Rev Dec 235

19. A similar view was held in Ramanathan Chettiar v Veerappa Chettiar reported in AIR 1956 Mad 89 which observed —

"(c) Civil P C (1908) O 32 R 7 — Compromise without permission

Unless the Court grants permission there is no compromise at all so far as the minors are concerned and there is therefore nothing on which a decree can be passed."

20. I respectfully agree with the said observations In Ram Sukh v Dy Director of Consolidation U P Lucknow reported in AIR 1971 All 352 such composition was arrived at without appointment of a legal guardian under R 14 sub-cl (2) of U P Consolidation of Holdings Rules (1954) it was held that non observance of the said rule vitiated the order itself

21 In Ram Chandra Arya v Man Singh reported in AIR 1968 SC 954 there was a decree against lunatic without appointment of guardian. It was held that such decree was a nullity and a sale held in execution of that decree was void ab initio It was observed at page 955 —

It is now a well settled principle that, if a decree is passed against a minor without appointment of a guardian the decree is a nullity and is void and not merely voidable

22. This principle applies with full force in the instant case also where during the minority of the plaintiff no legal guardian was appointed by the Consolidation Authorities concerned and such compromise was simply void. The other considerations that in some other plots minor also got some benefits are simply irrelevant and could not validate such void compromise

23 In the result the appeal is allowed Impugned judgment and decree are set aside and judgment and decree of trial court are restored. Costs of this Court shall be easy

Appeal allowed

1986 ALL. L. J 342

N N SHARMA, J

Lala Ram, Applicant v Arjun Das and another Opposite Parties

Civil Revn No 220 of 1984 D/ 23 10 1984

(A) Provincial Small Cause Courts Act (9 of 1887), S 17 — Ex parte decree — Application for setting aside — Hypothecation bond instead of depositing of decretal amount by judgment-debtor — Acceptance of — Proper — (Civil P C (5 of 1908), O 9, R. 13)

(Para 13)

(B) Provincial Small Cause Courts Act (9 of 1887), S 17 — Ex parte decree — Decree set aside by accepting hypothecation bond executed on basis of Machinery — Articles not embedded in earth — Acceptance of bond is not open to challenge on ground of non registration of bond. AIR 1934 Pat 74, Distinguished. (Civil P C (5 of 1908), O 9, R. 13, Registration Act (16 of 1908), S. 17).

(Para 15)

(C) Civil P C (5 of 1908), S 115 — Revision — Ex parte decree — Setting aside

of — Hypothecation bond by judgment-debtor — Acceptance of, by Judge in exercise of his discretion — High Court declined to interfere in revision (Para 15)

(D) Civil P C (5 of 1908), S 115 — Revision — Finding of fact — Service of summons — Statement of process server — Disbelieved by trial court — Finding as to non-service of summons by accepting defendant's statement — Is finding of fact — Not to be interfered in revision Case law discussed (Para 17)

(E) Civil P C (5 of 1908), S 115 — Evidence Act (1 of 1872), S 114, Ill (f) — Ex parte decree — Service of summons by registered post — No order of court as to service by registered post — Postman not examined — Postal receipt anterior to date of order for issuing of summons — Denial of signature on acknowledgment by defendant — Court concluding absence of service of summons — Ex parte decree set aside — Opportunity afforded to defendant to be heard — High Court declined to interfere with order in revision Case law discussed (Para 21)

Cases Referred	Chronological	Paras
AIR 1983 SC 954	(1983) 9 All LR 540	1983
All LJ 995		16
1981 All LJ 151	1981 All Rent Cas 281	20
1980 All Rent Cas 287	1980 (UP) RCC 282	17
1978 All Rent Cas 496 (1) (SC)		21
AIR 1977 All 151		13
AIR 1970 All 446 (FB)		19
AIR 1956 Cal 375		14
AIR 1951 All 424		12
AIR 1934 Pat 74		15
AIR 1923 Mad 594		11

Sudhir Narain Agarwal, for Applicant Vijai Bahadur for Opposite parties

ORDER — This is a plaintiff's revision directed against the judgment and decree dt 20-3-1984 recorded by Sri Radha Kant, learned XIII Additional District Judge, Kanpur in original suit No 39 of 1981 by which the ex parte decree dt 9-9 1982 was set aside and the application of applicant Arjun Dass under O 9 R 13 C P C dated 6-12 1982 paper No 54Ga, was allowed on payment of Rs 30/ as costs to the opposite parties The suit was restored to its original number

2 The dispute relates to the portion of premises No 160 693 Bhannapurwa, Kanpur wherein the respondents had installed a rice machine He used to pay rent at the rate of Rs 100 per month. The disputed premises were purchased by revisionist and three others who are opposite parties 1 to 3 The aforesaid suit No 39 of 1981 was filed on the J S C C side for recovery of arrears of rent and ejectment Ex parte judgment and decree in that suit were set aside as given above

3 It was averred in the application under O 9 R 13 C P C that the landlords wanted to eject Arjun Dass by hook or crook the rent was regularly deposited by him tenant also filed a suit for injunction against the landlords which was decreed on 22 10-1981 and the landlords were restrained from dispossessing him by force He deposited the rent under S 30 of U P Act No XIII of 1972 as the landlords refused to accept the rent remitted to them by money order They also did not accept the rent tendered by him

4 The applicant was kept in dark about the aforesaid suit and learnt about it when his machinery etc. were thrown out by Sri Kamlesh Kumar Advocate who was appointed Commissioner by the court to deliver possession to Lala Ram and others He got the file inspected on 29 11 1982 and learnt about the deception practised on him

5 The prayer was opposed by the decree holder on the ground that the report of the process server on the summons was correct applicant had full knowledge of the suit and decree There was no compliance of S 17 of Provincial Small Cause Courts Act and the application was not maintainable

6. Learned court below found that the security afforded was accepted by the court on 8 12 1982 applicant Arjun Dass was the victim of deception No process was served on him nor he received any registered notice nor he was served by publication Aggrieved by this order this revision has been filed

7 I have heard learned counsel for the parties and perused the record

8. On behalf of the revisionist it was argued before me that proviso appended to S 17 of P S C C Act was mandatory and it has not been complied with

9 The aforesaid proviso appended to S 17 aforesaid reads —

Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall at the time of presenting his application either deposit in the Court the amount due from him under the decree or in pursuance of the judgment or give such security for the performance of the decree or compliance with the judgment as the Court may on a previous application made by him in this behalf have directed.

Thus the contention was that there has been non compliance with this mandatory provision This provision did not include a security offered by Arjun Dass which was accepted wrongly by the court below

10. It appears that the bond offered by Sri Arjun Dass was provisionally accepted by the learned trial Judge on 8 12 1982 It bound the applicant to pay the decretal amount Para 2 of the bond is extracted below —

That I hereby guarantee the payment of the said amount towards the satisfaction of the decree due under this bond from my personal properties namely Rice Machine valued Rs 10 000/ and Electric motor valued Rs 6000/ in all totalling Rs 16 000/

The learned trial Judge observed that the original documents that were ordered to be shown by tenant were actually shown on 16 12 1982

11 Learned Advocate for revisionist argued that the word Security used in the said proviso did not cover a personal bond as was held in (Archakam) Venkatapathi Deekshathulu v Kathiramangalam Chenga Reddi reported in AIR 1923 Mad 594 It was laid that the proviso was mandatory It was further observed that there was nothing in the section to prevent a court from accepting personal security although it would not ordinarily do so So this authority does not rule out the type of security as was offered in this case

12. The next authority relied upon by revisionist has been reported in a Division Bench case Sakhawat Hussain v Rajab reported in AIR 1951 All 424 In that case application for restoration of suit and setting aside the ex parte decree was accompanied with a prayer to accept the personal bond of the judgment debtor That prayer was accepted It was held that there was no flaw if the court accepted the same It was pointed out that in such cases personal bond should not ordinarily be accepted although there was no legal bar

13 In the instant case there was hypothecation bond and not a mere personal bond and so its acceptance by learned trial Judge cannot be faulted on that score

14. The next contention was that this bond was unregistered. It is in evidence that Rice machine and Electric meter (motor) were not embedded in earth but had already been uprooted at the time of hypothecation So these articles could not be treated as immovable property so as to attract the principle laid in Kasemali v Ajoyandu Paul reported in AIR 1956 Cal 375

15. Learned counsel for the revisionist also relied upon Ram Khelawan Chaudhari v Durga Lal Chaudhari reported in AIR 1934 Pat 74 In that case the security bond hypothecating immovable property filed in time was unregistered and so it was held that such defect was fatal. In the instant case there is nothing on record to show that the aforesaid articles were embedded in earth at the time of hypothecation and so required registration. Thus when the said bond had been accepted by the learned trial Judge in exercise of his discretion this Court would be slow to interfere in revision as was held in Dulla Prasad v Smt Rajeshwari Bibi reported in AIR 1977 All 151

16. In Bhagwan Dass Arora v First Addl. District Judge Rampur reported in (1983) 9 All LR 540 (AIR 1983 SC 954) the appellant sought for setting aside the ex parte decree recorded by the Court of Small Causes for arrears of rent, etc. The appellant on 8th Aug 1977 moved an application under the proviso of S 17(1) of the aforesaid Act (Provincial Small Cause Courts Act, 1887) requesting the court to permit him to give security for the performance of decree in lieu of his liability to deposit the decretal amount The court permitted him to deposit Rs 2700/ in cash and for the balance of the decretal amount to

furnish adequate security On 31st Aug 1977 the applicant moved an application under O 9 R 13 C P C requesting the court to set aside ex parte decree as he happened to fall ill suddenly On that day he deposited Rs 2700/ in cash in court On 21 7 1977 Munsarim of the Court reported that the security bond furnished by the appellant was not duly stamped nor it was drawn on an appropriate stamp paper The court directed the appellant to furnish the requisite stamps within a week The appellant complied on 5 10 1977 It was maintained by decree-holder that there was no compliance with the mandatory provision aforesaid and so application of appellant under O 9 R 13 C P C was incomplete and liable to dismissal The trial court accepted this contention and dismissed this application After an unsuccessful revision petition in the district court, appellant moved a petition under Art 227 of the Constitution in the High Court at Allahabad. It was held by this Court that as appellant failed to furnish the adequate security bond duly stamped within the period of limitation application under O 9 R 13 C P C was incomplete and ineffective It was held by Supreme Court at page 544 (of All LR) (at p 957 of AIR) —

We are of the opinion that preferences of Judges should not be allowed to work hardship on litigant in respect of a procedural provision In this state of law and in view of the further fact that after the limitation period of 30 days expired Munsarim of the Court drew the attention of the Court to the fact that the surety bond was not duly stamped, the appellant a litigant cannot be penalised on the pain of being thrown out of Court on this technical ground Justice cannot be a play ground by kicking the ball from one Court to other depending upon which of the conflicting views will ultimately prevail leaving a litigant on the tenterhooks and ultimately to be told that he acted according to the view taken by a Full Bench of a High Court which did not find favour with the learned single Judge of the High Court of the State in which he resided This is not justice This is legalese which ought to be avoided

We accordingly allow this appeal, set aside the order of the trial court as well as the order in revision petition by the learned Addl. District Judge as also the decision of the High Court and grant the application made by the appellant for setting aside the ex parte decree and set aside the ex parte decree

17 The next contention was that the learned trial Judge wrongly rejected the statement of process server Rais Ahmad O P W1 who went to serve the summons Statement of Sri Rais Ahmad shows that he was badly shaken in cross examination about the person who wrote the report on the summons and about the witnesses who attested that report. In this connection learned trial Judge believed the statement of Arjun Dass that he was kept in dark about the summons or acknowledgment due relied upon by the revisionist Obviously this is a finding of fact and it is not for this court to interfere with the same in revision, as was held in Prabha Shanker Gupta v II Addl. District Judge. Ballia reported in 1980 All Rent Cas 287

18 Learned counsel for the revisionist found fault with the impugned order on the ground that the signatures of judgment debtor on acknowledgment due receipt was wrongly discarded by learned trial Judge There was nothing on record to show that it was not signed by judgment debtor Learned trial Judge wrongly observed that in the absence of examination of postman such service through registered post was unacceptable

19 In this connection reliance was placed upon Ganga Ram v Smt Phoolwati reported in AIR 1970 All 446 (FB) which held that when the registered envelop containing correct address of tenant was returned with the refusal endorsement a presumption of law under S 27 of General Clauses Act and presumption of fact under S 114 Illus (f) Evidence Act was available to the landlords However it was also observed in the same authority that those presumptions were rebuttable Applicant denied his signatures on acknowledgment report He also denied the knowledge of such letter So there was nothing wrong on the part of the learned trial Judge in discarding this evidence specially when he found from a perusal of the order sheet (Annexure-3) appended to the stay application that there was no order of the court to issue process through registered post. Even the order of issuing summons was recorded on 14-9-1981 so such service of summons or acknowledgment due dt 26-7 1981 and postal receipt dt 26-7 1981 could not have been

anterior to that date unless manoeuvred by someone else These observations are quite weighty

20 In Kesto Chandra Chatterjee v Chandra Pal Singh reported in 1981 All Rent Cas 281 (1981 All LJ 151) it was held that the presumption about service of registered letter could be successfully rebutted by defendant tenant if his statement was credible That statement has been believed by learned trial Judge So there is no legal or factual defect in the impugned order

21 Moreover by the impugned order an opportunity was afforded to the tenant to be heard and his defence was not shut out. It was held in Ramji Dass v Mohan Singh reported in 1978 All Rent Cas 496 (1)(SC) that court s discretion should be exercised in favour of hearing and not to shut out hearing This is another reason for which I would decline to interfere in revision with the impugned order

22. No other point was pressed before me in this revision

23 In the result revision is dismissed with costs Interim stay order dt 30 3 1984 is vacated, send the record at once to the court below for quick dispatch

Revision dismissed

1986 ALL. L. J 346

B D AGARWAL J

Mohd Mahir Applicant v State of U P Opposite Party

Criminal Misc Appln No 14403 of 1985 D/ 5-11 1985

Criminal P C. (2 of 1974), Ss 11(1), Proviso and 14(3) — Special Court of Judicial Magistrate established by State with its place of sitting at Allahabad to try specified cases — Court of Session conferred with powers in relation to such cases would be Sessions Court at Allahabad. (Customs Act (52 of 1962), S. 135).

Where the State Government in exercise of powers under the proviso to sub-sec. (1) of S 11 has established a special court of Judicial Magistrate of first class for all districts of the State for trying cases under certain enactments with its place of sitting at Allahabad, the Court of Session conferred with powers in relation to specified cases would be the Court of Session at Allahabad Thus where the Judicial Magistrate (Special) Allahabad rejected bail application of accused, it would be the Sessions Court at Allahabad that would be competent to hear the subsequent bail application

(Para 4)

Cases Referred Chronological Paras

1983 All LJ 1051 1983 All WC 568 2
AIR 1959 Madh Pra 147 1959 Cri LJ 600 2
AIR 1953 Pepsu 146 1953 Cri LJ 1525 2

Viresh Misra for Applicant Standing Counsel for Opposite Party

ORDER — The question which this application under S 482 Cr P C has given rise is short. The applicant is indicted of offence under S 135 of the Customs Act, 1962 On Sept. 15 1985 he was taken to the court of the Chief Judicial Magistrate Gorakhpur within whose local jurisdiction the offence was committed The Chief Judicial Magistrate directed that the accused be transferred to Allahabad for being produced before the Judicial Magistrate (Special) Economic Offences Allahabad On 30th Sept. 1985 the application for bail moved for the applicant accused was rejected on merit by the Chief Judicial Magistrate (Special) Economic Offences, Allahabad His application made thereafter to the Court of Session Allahabad, came up on transfer to the Court of the First Additional Sessions Judge Allahabad, who rejected the same on 7th Oct. 1985 under the impugned order with the observation that the jurisdiction to entertain the application vests in the Court of Session at Gorakhpur The applicant has thereafter approached this Court

2 Learned counsel refers to the notification published on Sept. 16 1982 issued by the State Government in exercise of the powers under the proviso to sub-sec (1) of S 11 of the Cr P C whereby after consultation with this Court the State Government has established a Special Court of Judicial Magistrate of the First Class for all districts of the State with its place of sitting at Allahabad to try cases arising under the enactments specified in the Schedule appended to the

notification including the Customs Act 1962 among others. The principle well settled is that an application for bail can only be made to the court which can take cognizance of the offence in respect whereof the accused is arrested or detained vide Gulam Mohammad v State AIR 1959 Madh Pra 147 and State v Sajjan Singh AIR 1953 Pepsu 146 this was also the view taken by a learned Judge of this Court in Ranveer Singh v Deshraj Singh Chauhan 1983 All WC 568 (1983 All LJ 1051) It may not therefore, be doubted that the application for bail lay before the Chief Judicial Magistrate (Special) Economic Offences Allahabad

3 Section 14(3) referred to in the impugned order reads as under

Where the local jurisdiction of a Magistrate appointed under S 11 or S 13 or S 18 extends to an area beyond the district or the metropolitan area, as the case may be in which he ordinarily holds court, any reference in this Code to the Court of Session Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate throughout the area within his local jurisdiction, be construed, unless the context otherwise requires as a reference to the Court of Session Chief Judicial Magistrate or Chief Metropolitan Magistrate, as the case may be exercising jurisdiction in relation to the said district or metropolitan area."

4 The local jurisdiction of the Judicial Magistrate (Special) Economic Offences Allahabad, extends in view of the notification dt 16th Sept. 1982 beyond the district of Allahabad in which this Court is directed to hold its sitting The reference to the Court of Session mentioned in S 14(3) aforementioned at the end, be construed as meaning the Court of Session exercising jurisdiction in relation to the district in which such Judicial Magistrate ordinarily holds the court The expression said district appearing in section 14(3) denotes obviously the district referred to earlier namely the district in which the Judicial Magistrate thus appointed ordinarily holds the court The Court below has erred in overlooking this significance of the expression the said district appearing at the fag-end of the sub-section This expression in the context may not denote any district other than the district talked about in the opening portion of the sub-section namely the district in which the Judicial Magistrate concerned is ordinarily to hold the court. There is nothing to suggest to the contrary in the notification made under S 11(1) under which this court has been created. This appeals also to common sense Where as in this case the case is triable before the Judicial Magistrate (Special) Economic Offences, Allahabad, the Legislature may not have intended that upon the application being rejected by the trial court, the accused has to go round the State making his application to the Court of Session situate in far flung areas where he may have sought the remedy had there been no special court created. The Court of Session conferred with the powers in relation to such a case is the Court of Session of the district Allahabad where the court thus created is ordinarily to have its sitting

5 Consideration being had to the above the impugned order dt 7th Oct. 1985 cannot be sustained, in my opinion. Since the court below has not entered into the merits of the application made for bail by the applicant, it is incumbent that the same is now considered on merits

6. The application succeeds and is allowed The order dt 7th Oct 1985 passed by the First Additional Sessions Judge, Allahabad is set aside The court below is directed to hear and decide the application for bail moved for the applicant accused expeditiously in accordance with law in the light of the observation contained hereinabove

7 Certified copy of the order may be supplied to the counsel for the parties on payment of usual charges within 48 hours.

Petition allowed.

1986 ALL. L. J 347

N D OJHA AND
R K SHUKLA, JJ

Jang Bahadur Saxena, Petitioner v VIII Addl Dist Judge Kanpur and others, Respondents.

Civil Misc. Writ Petn No 10472 of 1980
D/ 30-10-1985

U.P Urban Buildings (Regulation of Letting,

Rent and Eviction) Act (13 of 1972), S. 21(1)(a) — Suit for ejectment — "Bona fide need" — Need for accommodating daughter and son in-law pursuant to promise made at time of marriage — is not bona fide need

Where the landlord merely desired the accommodation in question to be vacated for accommodating his daughter and son in law in pursuance of a promise alleged to have been made at the time of marriage of the daughter that could not be equated with bona fide need of landlord. AIR 1974 SC 1596 Rel on

(Paras 3 4)

Cases Referred Chronological	Paras
1980 All LJ 99	1 2
1979 (UP) RCC (Suppl) 738	1
AIR 1974 SC 1596	3
(1974) Spl. Appeal No 28 of 1974 D/ 28 2 1974 (All) Sri Amar Nath v Addl Dist Judge Kanpur	2

S N Agarwal, for Petitioner D P Bahadur and Prakash Kumar for Respondents

N D OJHA, J — The petitioner is the landlord of house No 129/14 L Ali Zahir Market, Babu Purva, Kanpur In a portion of the said house the petitioner has himself been living Other portions are let out to various tenants One of the tenants is Sri Ram Adhin Shukla, respondent No 3 The petitioner has his wife and 3 daughters An application was made by the petitioner under S 21(1)(a) of the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 (hereinafter referred to as the Act) against the respondent No 3 for release of the accommodation in his tenancy on the ground that he needed it bona fide The ground on which the application was filed was that 2 of the daughters of the petitioner had been married and at the time of their marriages the petitioner had promised that they would be provided accommodation in premises No 129/14L, mentioned above It appears that the eldest daughter was already occupying a portion of the house aforesaid. The case of the petitioner was that he wanted the accommodation in the tenancy of respondent 3 to accommodate his second daughter and her husband in pursuance of the promise made by him at the time of the marriage of the said daughter The application was contested by respondent 3 and was dismissed by the Prescribed Authority The appeal filed by the petitioner was also dismissed by the VIII Additional District Judge Kanpur respondent 1 Aggrieved by these orders the petitioner filed this writ petition. It came up for hearing before a learned single Judge Before him, reliance was placed for the petitioner on two decisions of this Court in Ram Chaturvedi v Shiv Narain 1980 All LJ 99 and Smt Satya Misra v II Addl District Judge 1979 (UP) RCC (Suppl) 738 in support of his contention that even the requirement of the petitioner to accommodate his married daughter would constitute bona fide need of the petitioner The learned single Judge found difficulty to agree with the view taken in those two cases in view of the definition of the term family contained in S 3(g) of the Act and accordingly directed the papers of the case to be laid before the Hon'ble the Chief Justice for listing it before a Division Bench The writ petition has now been listed before us in pursuance of an order passed by the Hon ble the Chief Justice

2 It has been urged by the learned counsel for the petitioner that since the petitioner had at the time of marriage of his second daughter made a promise to accommodate her and her husband in the accommodation in question, the need of the petitioner to accommodate his daughter along with her husband was bona fide and the authorities below have committed a manifest error of law in taking a contrary view In support of this submission he placed reliance on the two cases on which reliance was placed before the learned single Judge and which have already been referred to above. In the case of Smt Satya Misra (supra) it was held —

"The expression for occupation by himself does not mean that the landlord should live in isolation If the state of health of a landlord or his age is such that he cannot live alone and would need the company or assistance of any other person then the need of the such other person whose assistance he needs would also be covered by this phrase Similarly if the landlord is invalid an accommodation required for a helper may also be considered as a need of the landlord. A distinction has therefore to be maintained between two classes of cases where a landlord does not need an assistance of a man but still he wants to keep some one with him, in such a case the need for occupation would not be that of the

landlord but of that other person But whereas here the landlord keeps his daughter and son in law to look after his business and for his help it will have to be held that the requirement of these persons to have an accommodation to live with the landlord is bona fide need of the landlord himself

In the case of Ram Chaturvedi (1980 All LJ 99) (supra) on the other hand, it was held that the fact the relations of the landlord who in that case were daughters and daughters children were residing with him since long was a relevant consideration for the Court to consider when examining the need of the landlord. There is another unreported decision of a Division Bench of this Court in Spl. Appeal No 28 of 1974 Sri Amar Nath v Addl. District Judge, Kanpur decided on 28 2 1974 It was held --

In the next place it was urged that the need of the landlady was held to be genuine because the District Judge erred in taking into consideration the needs of the members who were not the members of the family of the landlady as defined by the Act Cl (g) of S 3 defines family to mean, spouse male lineal descendants parents grand parents and any unmarried or widowed or divorced or judicially separated daughter of a male lineal descendant In the present case the landlady is a widow She is living with her daughter who is married Her son in law also lives with her with his five children The brother of the landlady s husband also lives with her In her application for release the landlady stated that the brother of her husband also resides with her and a separate accommodation has to be given to him It is true that none of the persons who are in fact living with the landlady could constitute family as defined by the Act But nonetheless on the finding of fact it is clear that these persons are normally living with the landlady The landlady feels the necessity of providing accommodation to these relations of hers Under S 21(1) one of the grounds of release is that the building is bona fide required by the landlady for herself or any member of her family In the totality of the facts the District Judge found that the accommodation in dispute was insufficient for the residential purposes of the landlady her relation and family members She was in need of more accommodation The question is whether the finding that the accommodation is genuinely needed by the landlady for her occupation is vitiated The necessity of the landlord to have some more accommodation for her occupation because the existing accommodation is hardly sufficient for her other relations is a material and relevant consideration in order to judge the genuineness of the need or the sufficiency of the accommodation Factually the residence of the actual relations is relevant It is not necessary that the fact finding authority is to take into account the needs of only such relations of a landlord who can constitute his family as defined by the Act The emphasis by S 21(1) is that extra accommodation is not to be given to the landlady for persons who are not members of the family but for her own need The fact that the need of the present accommodation was necessitated because of the residence of her other relations is not irrelevant The landlady could in the present circumstances put forward the plea that because of so many other relations living with her she needed extra accommodation for her residence and that seems to be the finding

On a conspectus of the decisions referred to above and of the provisions of S 21(a) and S 3(g) of the Act it is apparent that an application for release under S 21(1)(a) can be filed either on the ground that the building is bona fide required by the landlord for occupation by himself or by any member of his family The term family has been defined in S 3(g) of the Act If therefore an application is made under S 21(1)(a) of the Act on the ground that the building is bona fide required for occupation by any member of the landlords family the need has to be of one of those persons who come within the definition of the term family as contained in S 3(g) of the Act. The words for occupation by himself with reference to the landlord have, in our opinion to be construed in a manner which is commensurate with the personal requirement of the landlord There can be cases where the landlord in order to have a reasonably comfortable living, may be in need of company or assistance of a person or persons who may help him for instance as a nurse, cook or domestic servant and for some reason is not in a position to get such company or assistance from a person who is a member of his family as defined in S 3(g) of the Act, he will naturally have to fall back upon a person who does not fall within the definition of the

term family in S 3(g) If on evidence it is established that it would not be possible for the landlord to have company or assistance of such person or persons without providing them residential accommodation and he is not possessed of sufficient accommodation for this purpose an application under S 21(1)(a) of the Act may be maintainable to accommodate such person or persons as the case may be inasmuch as in such a case it would not be the need of such person or persons but the need of the landlord to have additional accommodation so that he may be in a position to have the company or assistance of such person or persons Such a need would apparently fall within the expression for occupation by himself as pointed out in the case of Smt Satya Misra (supra) and would apparently be bona fide If the requirement of the landlord does not fall in the said category and the landlord simply wants to keep some one with him who is not a member of his family it would not be a case where the need of the landlord could be treated as bona fide We also are in an agreement with the view taken by the Division Bench in Amar Nath v Addl. District Judge Kanpur (supra) that if some members of the family of the landlord, even if they do not fall strictly within the definition of the term family have been residing with the landlord permanently and the accommodation falls short and the landlord needs additional accommodation it would be a case where it is the requirement of the landlord for occupation by himself. In such a case, the landlord cannot be expected to turn out from the house such members of his family who do not strictly fall within the term family as contained in S 3(g) of the Act We may however point out that the cases falling in this category also have to be confined strictly to such contingencies where those persons were living permanently from before with the landlord. This category will not include such cases where the landlord wants to accommodate persons who do not fall within the definition of the term family and have not already been living with him and whose company or assistance is also not needed by the landlord in the sense already referred to above on account of which it could be said that accommodating those persons is the need of the landlord himself Such cases will also not fall in this category where some relations of the landlord not falling in the definition of the term family are proved to have been kept in the accommodation in question recently only for the purpose of making out a case for additional requirement The illustrations which we have given are not exhaustive and the question as to whether the need of the landlord is bona fide or not will have to be decided on the facts of each case

3 Coming to the facts of the instant case we are of the opinion that the need of the petitioner of accommodating his daughter or son in law on the ground that at the time of marriage a promise was made to that effect would not at all be bona fide It does not fall in any of the categories enumerated above Mattulal v Radhey Lal. AIR 1974 SC 1596 was a case where the landlord wanted a non residential accommodation in the occupation of the tenant to be released in his favour for the purpose of starting or continuing his own business While dealing with the question of bona fide requirement of the landlord under the M P Accommodation Control Act (41 of 1961) it was held that mere assertion on the part of the landlord that he requires the non residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive It is for the Court to determine the truth of the assertion and also whether it is bona fide The test which has to be applied is an objective test and not a subjective one The word required signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show – the burden being upon him that he genuinely requires the non residential accommodation for the purpose of starting or continuing his own business. The provisions about the bona fide requirement of the landlord under the M P Accommodation Control Act being in pari materia with S 21(1) of the Act the principle of law laid down in the case of Mattulal (supra) will apply to a case under S 21(1)(a) of the Act also Applying the test laid down in the aforesaid case it is apparent that the instant one is a case where the landlord petitioner merely desires the accommodation in question to be vacated for accommodating his daughter and son in law in pursuance of a promise alleged to have been made at the time of marriage of the daughter In this view of the matter the impugned orders cannot be

said to suffer either from any manifest error of law or error of jurisdiction so as to justify interference under Art 226 of the Constitution

4 The writ petition accordingly fails and is dismissed There shall however be no order as to costs

Petition dismissed

1986 ALL. L. J 351

B L YADAV J

Mohammad Amin Petitioner v Up Sanchalak Chakbandi (Dy Director Consolidation) Pratapgarh and others Respondents

Civil Misc. Writ Petn. No 3373 of 1972 D/ 4 10 1985

(A) Guardians and Wards Act (8 of 1890), Ss 29, 47(e), 48 — Order granting permission to mother who was appointed guardian, to transfer land of minor son — Vendee not party to proceeding — No fraud attributable to vendee in obtaining permission — Order cannot be challenged after expiry of three years on commencement of consolidation proceedings (U P Consolidation of Holdings Act (5 of 1954), S 9 A(2), (Evidence Act (1872) S. 114(e)).

Where the mother who was appointed guardian of minor son applied for permission to transfer plot on behalf of minor in accordance with provision of S 29 and permission was granted to transfer land in favour of vendee and there was no evidence to show that vendee was either party to proceedings under S 29 nor there was any evidence to indicate that fraud was committed by vendee in obtaining permission it could not be said that he was responsible for obtaining the permission and it could not be challenged by party claiming to be another vendee that the first vendee had committed fraud much later after the commencement of consolidation proceedings after the lapse of period of 3 years prescribed under Art. 59 of Limitation Act The order also would not be open to challenge as no appeal has been provided against such order and the same has been made final and immune from challenge by filing separate suit or otherwise

(Paras 8 9 14)

Further under S 114(e) of the Evidence Act, there is a presumption that all the judicial and official acts have been regularly performed There was no reason to assume or hold that vendee ought to have doubted the order granting permission In such matters it is the duty of the Court to which an application is made under S 29 for sanction of the sale of a minor's property to satisfy itself by inquiry that the transaction is necessary and for the benefit of the minor and creditor or a vendee is entitled to rely on the order of sanction as evidence that the court had satisfied itself that the transaction is a proper one

(Paras 8 9 14)

(B) Constitution of India, Art 226 — Finding of fact — Interference with — Findings about continuous possession against consent of true owner and otherwise than in accordance with law for more than period prescribed for maturing rights under S 210 of U.P Act 1 of 1951 — Are findings of fact — Same cannot be interfered with (U.P Zamindari Abolition and Land Reforms Act (1 of 1951) S 210)

(Para 15)

Cases Referred	Chronological	Paras
(1960) 3 All ER 353	(1960) 3 WLR 575	
Gladstone v Bower		12
AIR 1936 Bom 389	162 Ind Cas 530	9
AIR 1935 All 41		9
AIR 1927 Mad 233		9
AIR 1924 All 875		9
(1884) 12 Ind App 47	ILR 11 Cal 379	9

N A Kazmi, for Petitioner M A Qadir and Manzural Islam and Standing Counsel, for Respondents

ORDER — This Writ Petition under Art 226 of the Constitution is directed against the orders of the Deputy Director of Consolidation dt 22 1 1972 and 13-4-1972.

2. In the present writ petition the dispute is about khata Nos 5 etc of village Daryaopur Pargana and Tahsil Patti, District Pratapgarh. The Plots of these khatas were recorded in the name of Orisson of Chain and after his death in the name of his son Bhuar who died leaving behind his son Dargahi who

was minor at the time of his death and his mother Smt. Dunja was appointed as the guardian Smt Dunja being the guardian appointed by the court, applied for obtaining the permission of the District Judge to make the transfer in accordance with the provisions of S 29 of the Guardians and Wards Act 1890 (hereinafter referred to as the Act) and that the permission was granted on 7 3 1964 and in pursuance thereof registered sale deed was executed on 4 5 1964 in favour of Respondent No 11 Sri Jai Karan alias Jagat Pal in respect of Khata No 5 Thereafter the consolidation operations commenced and a dispute arose in respect of khata No 5 Respondent 11 etc filed an objection under S 9 A(2) of the U P Consolidation of Holdings Act claiming to be entered in the revenue papers as bhumidhar on the basis of the registered sale deed executed by Smt. Dunja, guardian of the minor Dargahi after obtaining the permission under S 29 of the Act. He also claimed rights as sirdar in the alternative under S 210 of the U P Zamindari Abolition and Land Reforms Act

3. The petitioner on the other hand, filed an objection in reply to that of Respondent 11 etc alleging that he was another vendee and the sale deed in favour of Respondent 11 was illegal and the name of the petitioner may be entered as bhumidhar Respondents 6 and 7 Brijlal and Jhagru claimed to be the co-tenure holders in khata No 5

4 The Consolidation Officer decided the case against the petitioner and held the other persons including Brijlal, Jhagru etc. to be co-tenants of the land in dispute by order dt 19 4-1971 The parties preferred different appeals The appeal of the petitioner was allowed and he was held to be a co-tenant by order dt 24-9-1971 Respondent 11 Jai Karan alias Jagat Pal preferred a revision which has been allowed by order dt. 22 1 1972 The Deputy Director of Consolidation held the respondent 11 to have no right on the basis of order for permission of sale or sale deed matured sirdari rights under Sec. 210 of the U P Zamindari Abolition and Land Reforms Act

5. The learned counsel for the petitioner has urged that as the Deputy Director of Consolidation has held the minor to have become major on the date when the permission was granted under S 29 of the Act for making the sale in view of the procedure laid down under S 31(2) of the Act, hence the permission itself was fraudulent and on the basis of such a permission no sale deed could have been executed in favour of Respondent 11 The sale deed in favour of Respondent 11 was accordingly illegal and the vendee Respondent 11 was not in possession for more than the prescribed period and he could not have become sirdar under S 210 of U P Zamindari Abolition and Land Reforms Act

6 The learned counsel for the respondents on the other hand, has urged that the permission was granted in pursuance of the procedure provided under S 31(2) of the Act and the mother was already appointed as the guardian of the minor on the date of the application under S 29 of the Act and she was not removed from the guardianship Further the vendee was not a party to those proceedings and he had no knowledge about the proceedings pertaining to the grant of permission for making sale nor he was attributed any motive in the proceedings for obtaining the permission to sell. Hence it could not be said that in obtaining the permission he committed any fraud As the sale was not set aside within three years from the date of its execution on behalf of the minor after minor attained majority in view of Art 59 of the Limitation Act, 1963 his claim was barred by time and principles of estoppel Under S 48 of the Act it has been provided that except for the result of the appeal being preferred under S 47 any other order made under the Act (including an order under S 29 having been obtained for making sale by the guardian of the minor) became final and cannot be questioned later on during the consolidation proceedings It was also urged that the rights under S 210 have been correctly given to the vendees in the alternative and findings in his regard are findings of fact

7 Having heard the learned counsel for the parties the first point for consideration is as to whether the permission having been obtained under S 29 of the Act by the guardian to make the sale can be challenged later on on account of the alleged fraud when in fact the vendee Respondent 11 was not a party to those proceedings nor there was any evidence on record of the case indicating any motive

attributable to him about the proceedings for grant of permission. The second point is whether the claim of the Respondent 11 was barred in view of Art. 29 of the Limitation Act and the third point was as to what is the effect of S. 48 of the Act and whether the permission can be challenged by a separate suit or in some other proceedings and the fourth point is as to whether Respondent 11 matured rights under S. 210 of the U. P. Zamindari Abolition and Land Reforms Act and whether those findings are findings of fact.

8. As regards the first point it is clear that Smt. Durga applied under S. 29 of the Act for grant of permission in accordance with the procedure prescribed. The vendee respondent 11 was not made a party nor he has any knowledge nor he had done anything in obtaining the permission nor any motive was attributed to him in respect of the commission of the fraud, if any. It cannot be said that respondent 11 was responsible for obtaining the permission under S. 29. Even in the application Dargahi was shown as minor. Later on it is not open to the petitioner to challenge the permission obtained by the guardian. There is no evidence led by him to show that Respondent 11, the vendee was neither a party to the proceedings under S. 29 nor there was any evidence to indicate that fraud was committed by the vendee in obtaining the permission, hence it is not open to the petitioner to challenge the same after the commencement of the consolidation operation. The vendee Respondent 11 has relied upon the order of the Court Dt. 7-3-1964 granting permission for making sale and he had no reasons to doubt the proceedings for grant of permission.

9. Further under S. 114(e) of the Evidence Act 1872 there is a presumption that all the judicial and official acts have been regularly performed. There is no reason to assume or hold that Respondent 11 (vendee) ought to have doubted the order of the District Judge granting permission. In such matters it is the duty of the Court to which an application is made under S. 29 for sanction of the sale of a minor's property to satisfy itself by inquiry that the transaction is necessary and for the benefit of the minor and creditor or a vendee is entitled to rely on the order of sanction as evidence that the court had satisfied itself that the transaction is a proper one (See R. M. Raman Chettiar v. Tirugnanasambandam Pillai AIR 1927 Mad. 233, Buddhu Gulab Das v. Sheo Charan, AIR 1924 All. 872, Ganga Pershad Sahu v. Maharani Bibi (1884) 12 Ind. App. 47, Ram Bhajan Kasodhan v. Mathar Ram, AIR 1935 All. 41 and Balaji Vasudeo Athawale v. Sadashiv Kashinath Lavate 165 Ind. Cas. 530 (AIR 1936 Bom. 389).

10. As regards the other point as the permission was granted in favour of the vendor the guardian and as discussed above no fraud is proved nor there was any evidence to indicate that any element of fraud can be made attributable to the vendee respondent 11 and once a permission was obtained and sale deed has been executed, that becomes final.

11. There is no appeal provided against an order granting permission to make sale. Whereas the order refusing permission to make sale under S. 28 or S. 29 has been made appealable in view of S. 47(e) of the Act. An order granting permission to make the sale on behalf of the minor on the other hand, has not been made appealable.

12. In Gladstone v. Bower (1960) 3 All ER 353 it was observed that the Court will always allow the intention of a statute to override the defects of wording. I am of the opinion that the legislature wants that once permission to make sale has been granted that should not be disturbed. Even if the petitioner wanted to challenge the order granting permission to make sale he should have done it much before the commencement of the consolidation operations and now it is too late in the day to challenge the said order. Further limitation under Art. 59 of the Limitation Act was only three years and that expired long ago.

13. Now the next point to be considered is as to whether in view of S. 48 of the Act the validity of the order of the District Judge granting permission for making sale can be challenged during consolidation operations or not. It is convenient to set out the statutory provisions of S. 48 of the Act.

48. Finality of other orders.

Save as provided by the last foregoing section and by S. 622 of the C.P.C. an order made under this Act shall be final and shall not be

liable to be contested by suit or otherwise

14. It is, thus clear that except as provided in S 47 for filing an appeal against the order under S 7 appointing or declaring or refusing to appoint a guardian S 9 returning an application S 25 making or refusing to make an order for the return of the ward to the custody of his guardian and under Ss. 28 and 29 refusing permission to guardian to do an act referred to in the section no appeal can be filed. It means that if the permission has been refused to a guardian to make a sale of the property of the minor in that case appeal would be filed and similarly other orders have been made appealable to the High Court under S 47 but the order granting permission to make the same has not been made appealable Hence it was clear that the legislature was conscious that once an order has been passed for making sale (vide Ss 31 and 29) that should become final and no appeal was provided under the provisions of S 48 Hence once the permission was granted to make a sale that order could not be challenged by filing any suit or in any collateral proceedings But in the instant case during consolidation operations by filing an objection the petitioner was challenging the order granting permission to make sale which could not be done in view of the provisions of Ss 48 and 47 being read together It is therefore clear that the petitioner has no right to challenge the order granting the permission for making the sale either by filing separate suit or in any collateral proceedings

15. Now there remains the last point that whether finding about respondent 11 having matured rights under S 210 of the U P Zamindari Abolition and Land Reforms Act are correct There is no doubt that in the alternative he would be deemed to be in possession otherwise than in accordance with the provisions of law and against the consent of true owner Respondent 11 has been held by the Dy Director of Consolidation to have matured his rights under S 210 of the U P Zamindari Abolition and Land Reforms Act. The findings about the continuous possession against the consent of the true owner and otherwise than in accordance with law for more than the period prescribed for maturing rights under S 210 of the U P Zamindari Abolition and Land Reforms act are finding of fact and need not be interfered with in writ jurisdiction of this Court under Art 226 of the Constitution of India.

16. In view of what has been discussed above the petition lacks merits and deserves to be dismissed

17 In the result the petition fails and it is accordingly dismissed However in the circumstances of the case I refrain from making any order regarding costs

Petition dismissed

1986 ALL L J 354

S D AGARWALA, J

Natha Ram Applicant v Hukam Chand and others, Opposite Parties

Civil Misc Applns Nos 2991 and 2982 of 1981 in Second Appeal No 606 of 1971 D/ 4-9 1985 *

Limitation Act (36 of 1963), S 5 — Civil P C (5 of 1908), O 22 Rr 3 and 9 — Setting aside of abatement — Applications for setting aside order of abatement and substitution of names filed after lapse of eight years — Applicants moving application for substitution in execution application in lower Court only after two months of death of appellant — Counsel who moved application for execution also responsible for filing second appeal — No sufficient cause is made out by applicants

(Paras 7, 8)

Cases Referred	Chronological Paras
AIR 1985 SC 1	7A
AIR 1984 SC 41	9 10

Kamta Nath Seth and Sushil Harkauli, for Applicant Beni Prasad Agarwal, for Opposite Parties

ORDER — These are three applications One application has been moved under S 5 of the Limitation Act seeking condonation of delay in making the application under O 22

---

*Against judgment and decree of J M. Mathur 3rd Addl Civil Judge Agra, D/ 19 11 1970.

R 9 of the C.P C The second application is an application for setting aside the order dt 21st Mar 1980 dismissing the second appeal as having been abated, and the third application is an application under O 22 R 3 of the Civil P C to delete the name of he sole appellant Natha Ram from the array of the parties and to substitute the names of the applicants in his place

2. The present appeal was filed by Natha Ram against the widow Smt. Draupati Devi and her minor son and daughter

3 Suit No 992 of 1965 had been filed by Natha Ram against the respondents for ejectment of the respondents from the premises in suit and for recovery of arrears of rent and mesne profits Another suit No 1016 of 1967 was filed by the minor son Hukam Chandra and minor daughter Km Meena through their next friend against Natha Ram for redemption of mortgage on the basis of transaction in suit Both the suits came up for hearing before the trial court Suit No 992 of 1965 was decreed for ejectment of the respondents while suit No 1016 of 1967 filed for redemption was dismissed. This judgment was delivered on 22 12 1969 Aggrieved against the said judgment two appeals were filed before the lower appellate court. The lower appellate court by judgment dt 19 11 70 allowed the appeal filed by the respondents and decreed the suit No 1016 of 1967 for redemption of the mortgage The respondents were liable to pay a sum of Rs 200/ as mortgage money It was further directed that in case the respondents failed to deposit a sum of Rs. 200/ then the suit shall stand dismissed So far as the suit No 992 of 1965 is concerned, the decree for ejectment was passed in case the mortgage money was not deposited as directed by the court If the mortgage money is deposited the ejectment was not to be given effect to

4 Against this judgment dt 19 11 1970 a second appeal was filed in this court in the year 1971 During the pendency of the second appeal in this Court Natha Ram died on 6th Nov 1973 No application for substitution was made in place of Natha Ram Natha Ram being the sole appellant, the appeal was abated by an order dt. 21 3-80 The death took place as stated above in 1973 but till 1980 no substitution application was filed

5 After the appeal was abated all the three applications have been filed in this court on 28th Sept 1981

6. The main ground which has been taken in the application for condonation of delay is that the applicants were not aware of the proceedings in the case and of the second appeal having been filed in the High Court at Allahabad Counter affidavit has been filed contesting the question of delay in filing these applications There is no dispute so far as the date of death is concerned or in regard to the heirs who have moved these applications A supplementary counter affidavit of Hukam Chandra has been filed to contest the applications In para 4 of this supplementary counter affidavit it has been categorically stated that after the death of Natha Ram the applicants who have moved the present applications in this court had also moved an application on 24th May 1973 in the court below for execution of the decree passed in suit No 992 of 1965 together with an application for substitution of their names in place of Natha Ram deceased and also filed an affidavit in support of the application for substitution A true copy of the execution application filed by the applicants who are the heirs of Natha Ram and the affidavit of Ramesh Chandra who is also one of the applicants have been filed as annexures 1 and 2 to this affidavit The execution application was filed for the reasons that according to the applicants the respondents had not deposited the amount of mortgage money and consequently according to them the decree became an executable decree In reply to this supplementary affidavit a supplementary rejoinder affidavit has been filed The contents of paragraph 4 of the supplementary counter affidavit have not been denied It is consequently admitted that the applicants in this court did move an application for execution after the death of Natha Ram as far back as 24th May 1973 immediately after the death of Natha Ram which had taken place on 6th Feb 1973 This conclusively establishes that the applicants had full knowledge of the pending suits and the litigation pending in regard to the said two suits

7 Learned counsel for the applicants has however urged that though they may be having knowledge of the pendency of the suit but they

did not have knowledge of the pendency of the second appeal filed in this court After going through various affidavits I am not inclined to accept this argument It cannot possibly be believed that the applicant did not have knowledge of the pendency of the second appeal in this court The applicants were so vigilant that only after two months of the death of Natha Ram they filed an execution application against the respondent This application was filed through Shri Rajendra Singh Advocate In para 4 of the supplementary rejoinder affidavit it has been further admitted that the second appeal had been filed on the advice of Shri Rajendra Singh Advocate The counsel who moved the execution application was the counsel who was responsible for filing the second appeal and as such it cannot be believed that the said counsel or his clerk would not have informed the applicants of the pendency of the second appeal In my opinion the ground taken for condonation of delay is concocted one only with a view to move the application for substitution after a lapse of almost eight years In the circumstances in my opinion sufficient cause has not been made out for condonation of delay in moving the application under O 22 R 9 as also for the delay in moving the substitution application after the disposal of the appeal by this court on 21 3-1980

7A. Learned counsel for the applicant has cited two cases in support of his submissions of the Hon'ble Supreme Court The first case relied upon by the learned counsel is Sital Prasad Saxena v Union of India AIR 1985 SC 1 Learned counsel for the applicants has relied upon the following observations made by the Hon'ble Supreme Court —

"The second error was that once an appeal is pending in the High Court the heirs are not expected to keep a constant watch on the continued existence of parties to the appeal before the High Court which has a seat far away from where parties in rural areas may be residing And in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party Let it be recalled what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties"

8 In my opinion this observation does not help the applicants Here the question of watching the proceeding before the High Court did not arise The applicants moved an application for substitution after the death of their father on 24-5-1973 They were fully aware of the proceedings They were so vigilant that they proceeded to execute the decree and moved an application for substitution in the court below on 24th May 1973 but they completely neglected to take any step for moving any substitution application in the High Court These applicants are clever litigants They knew that substitution application had to be filed and it was therefore that immediately after the death of the applicants father they moved the substitution application in the court below They were wholly negligent in not taking steps in the High Court It appears that they did not move the application in the High Court for the reasons that they thought that they will get the decree executed in the court below and will get the possession of the property

9 The second case relied upon by the learned counsel is Smt Lachi Tewari v Director of Land Records AIR 1984 SC 41 In this case also reliance has been placed on certain observation made by the Hon'ble Supreme Court that as the appeal in the High Court was suddenly listed before the court and the counsel had been engaged to appear but they did not appear for no fault of the appellant

10 In the instant case the observation made in Lachi Tewari's case (supra) does not apply because here there was no fault on the part of the counsel The substitution application had to be filed by the applicants themselves and they had to take steps for filing the substitution application It is then that the appeal has been abated for their default and not due to the default of their counsel

11 I must emphasise that in the instant case after going through the records I find that the litigation started merely because a paltry sum of Rs 200/- were alleged to have been paid which was taken on loan from the applicants father Natha Ram creating a mortgage on the property of the respondents The respondents are a minor son and a minor daughter along with widowed mother The court below had directed the payment of this

amount to the applicants father Nathu Ram There is no other right of the applicants in the property in dispute The entire litigation appears to be a method to harass the respondent who is a poor widow along with her children and to take possession of the house in dispute In his view of the matter I do not find any equity in favour of the applicants The money which they had given and mortgaged the property had already been given back by the respondents as stated by the learned counsel for the respondents

12. In the result, all the three applications mentioned above are hereby dismissed. The parties are, however directed to bear their own costs

Applications dismissed

1986 ALL. L J 357

N N SHARMA, J

Ata Mohammad, Applicant v Tulli and others Opposite Parties

Criminal Revn. No 69 of 1983 D/ 10-9 1985

(A) Criminal P C (2 of 1974), S 145 — Recording of final order — Magistrate giving reasons in preliminary order for holding that breach of peace existed — It is not necessary to repeat same finding while recording final order

Where it was the case of revisionist himself that there was apprehension of breach of peace and police report lodged by him in this connection was also on record and he also adduced evidence in his support and on perusal of the report the Magistrate had passed the preliminary order and in his preliminary order he had given the reasons for holding that breach of peace existed, he was not under necessity to repeat the same finding while recording the final order 1980 Cri LJ 1276 (SC) Foll. (Para 14)

(B) Criminal P C (2 of 1974), Ss 401 and 145 — Decision of Magistrate as to factum of possession in proceedings under S 145 — Existence of evidence in support of decision — High Court cannot interfere with decision of trial court. (Para 18)

LC/BD/G855/VSD/SNV

Cases Referred Chronological		Paras
1980 Cri LJ 1276	AIR 1981 SC 18	14
1978 Cri LJ NOC 82	1978 All Cri C 68	10
1977 All Cri C 355	1977 All Cri R 106	10
1975 Cri LJ 1026	1975 All WC 55 (FB)	10
1973 Cri LJ 1091 (All)		10
1969 Cri LJ 13	AIR 1968 SC 1444	10
1969 All Cri R 515	1969 All WR (HC) 817	10
1967 Cri LJ 1051	AIR 1967 Punj 378	14
1964 Cri LJ 671	AIR 1964 Hyd 93	14
(1926) 27 Cri LJ 471 (Lahore)		18

Poonam Srivastava and M. C Agarwal, for Applicant G P Dixit and I M Khan, for Opposite Parties.

ORDER — This revision is directed against order dt. 31 12 1982 recorded by Sri Shushil Kumar learned Sub Divisional Magstrate, Bindki, district Fatehpur in Case No 30 of 1981 under S 145 of Cr P C. rejecting the case of revisionist and releasing the attached crop and holding in favour of Tulli opposite party

2. These proceedings were initiated on the application by the revisionist under S 145 Cr P C with the allegation that he got plot No 714 area 14 bighas 10 biswas of village Gaura and plot No 56 area 1 bigha, 4 biswas and 15 biswanss of village Gopalpur from his maternal grandfather Ghasitey and was in possession thereof. Opposite parties, about ten in number were unruly and disturbed his possession and there was apprehension of breach of peace

3. The revisionist was surrounded on 16-12 1980 by opposite parties who had to save his life with difficulty — opposite parties wanted to forcibly cut away his crop

4 Learned S D M invited report from police. Police report dated 29-3-1981 disclosed such apprehension of breach of peace Learned Magistrate being satisfied with the report of the police issued a preliminary order under S 145 (1) of Code of Criminal Procedure.

5. Tulli filed his written statement on 27 6-1981 He set up his possession and title over the disputed property

6. After appraisal of rival contentions, learned Magstrate attached the disputed crop on 14-4-1982 under Section 145(8) Cr P C

7 Parties adduced evidence in support of their rival contentions Learned Magistrate believed the case of opposite parties and ordered the release of property in their favour

8 Aggrieved by the above order this revision has been filed in this Court

9 I have heard learned counsel for parties and perused the record carefully

10 The first contention raised by learned Advocate for revisionist is that while recording the impugned order the learned Magistrate omitted to record a finding that there was an apprehension of breach of peace which had ceased So such order could not be allowed to stand vide Chhotey v Om Prakash reported in 1978 All Cri C 68 (1978 Cri LJ NOC 85) A final order could have been drawn only by the Magistrate in a case where there was an apprehension of breach of peace At the time of passing the final order such omission of the finding rendered the order of the Magistrate illegal vide Chandra Prakash Nath Misra v Smt Prem Sundari reported in 1977 All Cri C 300 It was further pointed out that in that case the learned Judge based himself on a full Bench decision of this Court in Gaj Raj v Collector Singh, 1975 All WC 55 which posited at page 64 (1975 Cri LJ 1026 at p 1035) —

(1) The Supreme Court decision in R H Bhutani v Miss. Mani J Desai (1969 Cri LJ 13 AIR 1968 SC 1444) does not lay down the law that even if a plea is raised under sub-sec (5) of S 145 of the Code such a plea must be rejected once the Magistrate had arrived at the conclusion under sub-sec. (1) of S 145 that there was an apprehension of a breach of the peace

(2) Where the Magistrate does not record a finding on the plea raised by any party that there did not exist or never existed a dispute likely to cause a breach of the peace and instead proceeds with the inquiry and passes a final order under sub-sec. (6) of S 145 of the Cr P C. there is no defect in the competence of the Magistrate to pass such an order the defect is merely in the exercise of jurisdiction with the result that the proceeding shall not be vitiated unless the omission has occasioned a failure of justice that is on the basis of the material on record it can be said that no dispute likely to cause a breach of the peace existed or if it existed has ceased to exist The defect in the exercise of jurisdiction would be curable under S 537 of the Code In my opinion therefore to the extent the Division Bench decision in Sankatha Singh v Rahmat Ullah (1973 Cri LJ 1091) (All) and Sheo Nath Singh v Mannoo Singh Yadava (1969 All Cri R 515) lay down the law to the contrary they are no longer good law

11 A mere look at the aforesaid observations shall go to disclose that the said observation of the Full Bench do not support the contention of learned Advocate for revisionist

12 Learned Advocate for revisionist also referred to S 145(5) of the said Code which reads as below —

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested from showing that no such dispute as aforesaid exists or has existed, and in such case the Magistrate shall cancel his said order and all further proceedings thereon shall be stayed but subject to such cancellation the order of the Magistrate under sub-sec (1) shall be final

13 Thus the contention was that without recording such finding, the final order of learned Magistrate was simply illegal

14 I do not subscribe to this view It was the case of the revisionist himself that there was an apprehension of breach of peace There is on record the police report lodged by him in this connection. He also adduced oral evidence in support of his allegation Learned Magistrate himself invited the police report and it was after the perusal of the report dt 29 3 1981 about the apprehension of breach of peace that impugned order was drawn In his preliminary order drawn by learned Magistrate, he has given the reasons for holding that a breach of peace existed. He was not under the necessity to repeat the same finding while recording the final order This controversy has been set at rest now by Rajpati v Bachan reported in AIR 1981 SC 18 (1980 Cri LJ 1276) which observed —

A finding of existence of breach of the peace is not necessary at the time when a final order is passed nor is there any provision in the Criminal P C requiring such a finding in

the final order Once a preliminary order drawn up by the Magistrate sets out the reasons for holding that a breach of the peace exists it is not necessary that the breach of peace should continue at every stage of the proceeding unless there is clear evidence to show that the dispute has ceased to exist so as to bring the case within the ambit of sub-sec (5) of S 145 unless such a contingency arise the proceedings have to be carried to their logical end culminating in the final order under sub s (6) of S 145 Decision of Allahabad High Court Reversed AIR 1967 Punj 378 (1967 Cri LJ 1051) and AIR 1954 Hyd 93 (1954 Cri LJ 671) Approved

Assuming however that there was an omission on the part of the Magistrate to mention in his final order that there was breach of the peace that being an error of procedure would clearly fall within the domain of a curable irregularity which is not sufficient to vitiate the order passed by the Magistrate particularly when there is nothing to show that any prejudice was caused to any of the parties who had the full opportunity to produce their evidence before the Court It was therefore not correct on the part of the High Court to have interfered with the order of the Magistrate on a purely technical ground when the aggrieved party had a clear remedy in the civil court

15 I respectfully follow the same view

16 The next contention that the question of title has not been finally determined so far and so the possession of opposite parties should not have been believed by the learned Magistrate

17 This contention also has no legs to stand upon Besides the oral evidence adduced by opposite parties their tube-well is in the disputed holding The entries in the revenue papers are also in their favour

18 Learned Magistrate has referred to copies of Khasras and Khetauni supporting the version of opposite parties and also the strong circumstance that the revisionist lived in Kanpur while the disputed property lay in district Fatehpur There was no documentary evidence in support of the possession of revisionist Finding about the possession is a finding of fact which was to be recorded by learned Magistrate. The High Court in revision cannot interfere with the decision of a trial court on the fact of possession so long as there is evidence in support of the finding vide Abdul Satar (1926) 27 Cri LJ 471 (Lahore) The High Court does not interfere in revision with orders under S 145 on the merits as a rule It interferes only in following cases —

(1) Where necessary parties were left out or wrong persons made parties

(2) Where the Magistrate refused to receive evidence tendered to him.

(3) Where the Magistrate s finding of facts regarding possession was perverse and contrary to a mass of unrebutted evidence

(4) Where no order in writing as required by sub-sec (1) was recorded by the Magistrate

(5) Where the Magistrate refused to issue process for the attendance of material witnesses

(6) Where the Magistrate discarded the evidence altogether and based his decision merely upon his local inquiry or

(7) Where the Magistrate declared possession with a party who had long been out of possession

19 None of these grounds have been made out in this case

20. In the result the revision is dismissed as devoid of force Interim orders dt 20-1 1983 and 28 2 85 are vacated herewith

21 Send the record to the court below

Revision dismissed

1986 ALL. L. J 359

(LUCKNOW BENCH)

U C SRIVASTAVA J

Zafarullah Khan Petitioner v IVth Additional District Judge Faizabad and others. Opposite Parties.

W P No 3714 of 1982 D/ 1 3-1984

Civil P C (5 of 1908), O 6 R. 7 — Amendment of written statement at appellate stage — No explanation for delay given — Amendment sought for vague in nature and

depriving opposite party fruits of decree — It cannot be allowed.

The services of petitioner Assistant Teacher in Higher Secondary School were terminated and he filed a suit against it on grounds that society governing the school had its own bye-laws and provisions of U P Intermediate Education Act applied to said institution and suit was decreed in favour of petitioner with result that his termination was held to be void. The opposite party filed an appeal against the said judgment and decree in which an application for amendment of written statement was moved in which the defendants wanted to take the plea that the institution was established by Muslims and was a minority institution and wanted to claim benefit of Art 30 of the Constitution that the provisions of Act would not govern employment of petitioner and termination of petitioner could not be held to be void. Though the amendment sought for was not purely a question of law and yet not a word was said that the facts in this behalf were already on record Thus, the plea of law was sought to be taken without necessary averments in that behalf

Held that amendment prayed for at a late stage in appeal without any explanation for delay or as to why such plea was not taken before which was vague in nature, without any statement to the extent of prima facie case even obviously is to result in roving enquiry which would necessarily cause serious injustice to petitioner and may result in depriving him of gain and fruits of decree and of service again Such an amendment could not be allowed Case law discussed

(Para 7)

For an amendment of written statement even at the appellate stage liberally allowing the same is to be the guiding factor but such amendments could be allowed only if there is reasonable explanation for delay in making the application and the reasons why it was not sought in the trial court should be assigned and provided also that the amendment sought for does not introduce a new case which changes the original nature of the defence and also does not work any serious injustice or irreparable loss to the other side If amendment sought for is vague or is calculated to have a fresh enquiry of roving and rambling in nature or entails a fresh and different enquiry altogether as distinguished from earlier enquiry after accrual of certain rights in favour of the other party which may cause serious injustice to him such amendments cannot be allowed

(Para 6)

Cases Referred	Chronological	Paras
AIR 1983 SC 319	1982 All WC 201	3
AIR 1979 SC 551	(1979) 4 SCC 163	5
AIR 1978 SC 798		4
AIR 1968 SC 662		2

H S Sahai for Petitioner Brijesh Kumar for Opposite Parties

ORDER — The part of the order passed by the IV Additional District Judge Faizabad, allowing amendment of the written statement in appeal filed by the opposite parties arising out of a suit filed by the petitioner a teacher in Forbs Intermediate College Faizabad, is subject matter of challenge in this writ petition The Additional District Judge in exercise of its revisional power rejected one amendment but allowed the other amendment prayed for by the defendants to the suit The defendants of the suit i e the opposite parties have not challenged that part of the order by filing of the writ petition and the plaintiff to the suit the teacher has filed this writ petition

2 The plaintiff petitioner who was appointed as Assistant Teacher in Forbs Higher Secondary School (now Intermediate College) filed a suit challenging the order dt 25-4 75 by which his services were terminated It was pleaded by the petitioner that the Society known as Forbs Higher Secondary School, Faizabad has its own bye-laws and scheme of administration duly approved by the Deputy Director of Education and the provisions of the U P Intermediate Education Act and rules, regulations and ordinances are fully applicable to the said institution The suit was contested by the defendants who admitted this position, but defended the termination order on the ground that the same was legal. The suit of the plaintiff petitioner was decreed and it was held that the termination order was void and decree for realization of salary was passed. The decree was executed and the petitioner succeeded in getting the arrears of salary and joined the institution in which he is still continuing This was done after the objections under S 47 filed by the opposite parties were dismissed and thereafter 1st appeal was filed by the opposite parties against the judgment and decree

dt 15th May 1980 which came up for hearing before the Additional District Judge The appeal was adjourned on certain dates and it was only on 7th April,1982 the opposite parties moved an application for amendment of the written statement in appeal It was prayed that few important pleas could not be taken in the written statement by mistake and they were necessary for proper adjudication of the case The main plea was that the defendants college being a minority institution the provisions of U P Intermediate Act would not govern the employment of the petitioner and as such his termination could not be held to be void. The Additional District Judge rejected the other amendment prayed for but so far as this amendment is concerned, it was allowed By this amendment, it appears the defendants wanted to claim benefit of Art 30 of the Constitution of India The said Article reads as follows —

Art 30 Right of minorities to establish and administer educational institutions

(1) All minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in cl. (1) the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause

(2) The State shall not in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language "

In the instant case it will not be out of place to mention that there was no dispute that the institution was governed by the U P Intermediate Act and the Rules and Regulations framed thereunder and it was an aided institution governed by the said Act and was getting grant from the State Government The amendment which was prayed for was not purely question of law and in the written statement even not a word was said that the facts in this behalf were already on the record. It appears that the defendants wanted to take the plea though they have not taken in so many words that this institution was established by Muslims and was a minority institution U P Intermediate Act also makes certain safeguards in respect of the institutions said to be minority institutions in respect of which there was no foundation even in the written statement. Thus a plea of law was sought to be taken without any necessary averments or details in this behalf Not a word was said that the institution was established only by the Muslims and that it was established in the interest of that community or was giving religious teaching or imparting religious education and that it was admitted by the members of that community only During the course of arguments learned counsel for the opposite parties stated that the Society was started by few prominent Muslim and one Hindu citizens of Faizabad in the name of an English man Thus it was not established by members of Muslim community alone Learned counsel further stated that it would not be possible to state that the same was for the benefit of Muslims and for advancing religious teaching No notice of these oral submissions can be taken which may not support the case of opposite parties Rights and protection conferred under Art 30 of the Constitution are available only to those institutions which have not only been established by minority as understood in that Article but are also administered by the said minority community itself as has been held in Azeez Basha v Union of India. AIR 1968 SC 662

3 O 6 R 17 C P C confers power on the court to allow the amendment of the pleadings This power is exercisable at any stage of the suit including the appellate stage It is true that the procedural law is intended to facilitate or to administer substantial justice, but the same does not mean that every amendment of pleading at any stage which may not even be bona fide or be the result of some mala fides or is designed to take away valuable rights which accrue in favour of a party or is calculated to do injustice to the other party should be allowed. In its recent decision Haridas Aikdas Thadani v Godrej Rustom Kermani 1982 All WC 201 (AIR 1983 SC 319) the Supreme Court of India observed that it was well settled that the court

should be extremely liberal in granting prayer of amendment of pleadings unless serious injustice or irreparable loss is caused to the other side and that it was also clear that a Revisional Court ought not to lightly interfere with a discretion exercised in allowing amendment in absence of cogent reasons or compelling circumstances This case though again reiterates that in the matter of allowing amendment of pleading to extreme liberty should be observed yet the same is not to be allowed if serious injustice or irreparable loss is caused to other party to the litigation There can be no fixed criteria to find out serious injustice or irreparable loss to other party to litigation and it depends on the facts of every case

4 In Haji Mohammad Ishaq v Mohd Iqbal AIR 1978 SC 798 in appeal an application for amendment introducing a new case and for adducing additional evidence under O 41 R 27 C P C was moved. It was held that the amendment of the written statement sought in appeal was on such facts which if permitted would completely change the nature of defence and such amendment thus deserves to be rejected In the said case although something was said in the statement given before the trial court but no prayer for amendment of the written statement and to adduce evidence before the trial court It was three years thereafter that the prayer for amendment of the written statement on such facts was made which obviously would have completely changed the nature of the defence in the said case

5 In Ishwardas v State of Madhya Pradesh (1979) 4 SCC 163 (AIR 1979 SC 551) in which case the plea of res judicata was sought to be taken at the appellate stage which was rejected by the High Court on the ground of absence of necessary material but was allowed by the Supreme Court, it was observed that there is no impediment or bar against an appellate court permitting amendment of pleadings so as to enable a party to raise a new plea, provided the appellate court observes the well known principles subject to which amendments of pleadings are usually granted There should be a reasonable explanation for the delay in making the application seeking such amendments and, if made at the appellate stage, the reason why it was not sought in the trial court If the necessary material on which the plea arising from the amendment may be decided is already there the amendment may be more readily granted than otherwise But there is no prohibition at the appellate stage merely because the necessary material is not already before the court

6 Thus in order an amendment of the written statement at the appellate stage is to be allowed, there should be reasonable explanation of delay in making the application for amendment at the appellate stage The plea of res judicata was sought to be added at the appellate stage and the law with reference to the same as mentioned was laid down. Though the said case is an authority for allowing the legal plea raised by way of amendment which rather goes to the root of the matter even though there may not be necessary material for the same on the record but even the same could not be allowed unless there is reasonable explanation for delay and court accepts the same For an amendment of written statement even at the appellate stage liberally allowing the same is to be the guiding factor but such amendments could be allowed only if there is reasonable explanation for delay in making the application and the reasons why it was not sought in the trial court should be assigned and provided also that the amendment sought for does not introduce a new case which changes the original nature of the defence and also does not work any serious injustice or irreparable loss to the other side. If amendment sought for are vague or is calculated to have a fresh enquiry of roving and rambling in nature or entails a fresh and different enquiry altogether as distinguished from earlier enquiry after accrual of certain rights in favour of the other party which may cause serious injustice to him such amendments cannot be allowed

7 In the instant case it is admitted that the institution is governed by the U P Intermediate Education Act and it has got a scheme of administration duly approved by the Deputy Director of Education and no plea that the institution is minority institution was taken the amendment prayed for at a late stage in appeal without any explanation for delay or as to why such a plea was not taken before which was vague in nature, without any statement to the extent of prima facie

case even, obviously is to result in roving inquiry which would necessarily cause serious injustice to the person concerned and may result in depriving him of the gain and fruits of decree and from service again. The amendment so prayed was obviously of such a nature which could not have been allowed being of that category which in view of the legal position comes within the prohibited limits.

8. The writ petition is allowed and the order dt. 25-5-82 (Annexure-6) passed by the IV Additional District Judge by which he allowed the opposite parties to amend the written statement taking the plea that it was minority institution and the provisions of U.P. Intermediate Education Act do not apply to it is quashed. No order as to costs.

Petition allowed

1986 ALL. L. J. 363

AMARENDRA NATH VARMA, J.

Smt. Krishna Devi, Applicant v. Sarju Prasad and another, Opposite Parties.

Civil Revn. No. 740 of 1984, D/ 18-11-1985 *

Civil P.C. (5 of 1908), O. 8, Rr. 6-A to 6-F (as amended by Amendment Act (104 of 1976)) — Counter claim — Entertainment of — Jurisdiction of Court to try subject matter of counter claim as seperate action is condition precedent (Provincial Small Cause Courts Act (9 of 1887), S. 23).

The clear legal position which emerges from judicial precedents as well as an analysis of Rr. 5-A to 6-G of O. 8 is that if the Court in which the defendant sets up a counter claim would not have jurisdiction over the subject matter of the counter claim if tried as separate and independent action, it shall not have jurisdiction to entertain the counter claim. (Para 30)

Where in a suit for eviction and arrears of rent in the Court of Small Causes the defendant sets up a counter claim claiming title in herself and further claiming that she be declared as absolute owner of the suit house then the Small Cause Court was justified in excluding the counter claim set up by the defendant as the Small Cause Court had no jurisdiction to grant the relief sought by the defendant. In such a case it could not be said that if the Small Cause Court did not have jurisdiction to grant the reliefs claimed in the counter claim by the defendant it could return the plaint to be presented to a Court having jurisdiction to determine the title. (Case law discussed) (Para 30)

Cases Referred	Chronological	Paras
AIR 1983 Mad 291		29
AIR 1979 All 12		27
AIR 1976 Cal 115		16
AIR 1972 SC 1048		29
AIR 1965 Andh Pra 18		16
AIR 1964 SC 11		17, 28
AIR 1950 All 201		14
AIR 1949 Mad 630		13
1914 AC 510, 110 LT 865, 30 TLR 351 Willms Brothers v. Agius Ltd.		13
1907 AC 397, 101 LT 167, 25 TLR 833 Bow Mc Lachlan & Co v. Ship Camosun		13

S. V. Saxena and Jay Prakash Pandey for Applicant; S. N. Srivastava, for Opposite Parties.

ORDER — This is a defendant's revision directed against an order passed by the learned II Addl. District Judge, Allahabad allowing an application filed by the plaintiff-opposite parties for an order that a counter claim set up by the defendant applicant in a suit filed by the plaintiff opposite parties be excluded under O. VIII, R. 6 C of the Civil P.C.

2. The relevant facts are that the plaintiff opposite parties have filed a suit against the defendant applicant for ejectment from premises No. 29 Tagore Town, Allahabad as well as for recovery of Rs. 28,236/- claimed as arrears of rent and pendente lite and future mesne profits at the rate of Rs. 780/- per month. The plaintiff-opposite parties claimed that they were the landlords and the defendant was their tenant on a monthly rental of Rs. 780/- Rent with effect from Aug. 7, 1977 had fallen in arrears whereupon the plaintiffs served a combined notice of demand calling upon the defendant applicant to pay the aforesaid arrears as also to vacate the premises

*Against judgment and order of G.S.N. Tripathi, Judge, Small Cause Court, D/ 10-10-1984

3. A written statement was filed on behalf of the defendant applicant in which she denied the title of the landlords and set up a counter claim claiming title in herself It was asserted that the house originally belonged to the defendant applicants At the relevant time when she is alleged to have sold the house to the plaintiffs, i.e Oct. 10 1969 the defendant s only son was seriously ill as a result of which she was highly depressed and in a very disturbed mental state The plaintiffs enjoyed her implicit confidence and took advantage of her disturbed mental state Besides the defendant is an illiterate and purdanashin lady Instead of a mortgage deed which the defendant intended to execute for raising money for the treatment of her son the plaintiffs fraudulently got a sale deed along with a deed of reconveyance and a rent note executed by her in their favour taking advantage of the circumstances mentioned above without explaining the contents thereof to her She was all the time under the impression that she had executed a mortgage deed in favour of the plaintiffs. It was only when the plaintiffs received a notice dt July 22 1980 from the plaintiffs demanding arrears of rent and asking her to vacate the premises in suit that the defendant came to learn that she had been defrauded by the plaintiffs

4 After setting out these pleas the defendant claimed the following reliefs in support of the counter claim

(a) That this Hon'ble Court may be pleased to declare the deed of transfer dt 10-10-69 of the house in suit executed by the defendant in favour of the plaintiffs as invalid and void ab initio and also cancel the same

(b) That the defendant be declared as the absolute owner of the house No 29 Tagore Town Allahabad

(c) That in the alternative a decree may be passed in favour of the defendant against the plaintiffs in the abovenoted suit and the plaintiffs be directed and ordered to execute a sale deed of house No 29 Tagore Town Allahabad in favour of the defendant Srimati Krishna Devi and in default the same may be executed and done by the Court at its own accord at the cost of the plaintiffs.

(d) That any suitable decree and order may also be passed in favour of the defendant against the plaintiffs

(e) That this Court may be pleased to award any relief which it deems fit and proper in the ends of natural justice

(f) That the costs of the suit be awarded to the defendant

5 The plaintiff opposite parties then filed an application (28C) for excluding the counter claim set up by the defendant on the ground that the counter claim was set up on pleas which were wholly extraneous and beyond the scope of the suit Further the court which was exercising the powers of a Small Cause Court could not grant the relief sought by the defendant in her counter claim The defendant filed an objection asserting that the Court was fully competent to entertain the counter claim as set up by her as well as to grant the reliefs

6 The Court below considered the plaintiffs application as well as the objection filed by the defendant and by the impugned order it has allowed the plaintiffs application after hearing learned counsel for both the parties

7 Aggrieved by the aforesaid order the defendant has filed this revision For the applicant Sri S N Misra vehemently contended that the Court below was fully competent to entertain the counter claim It was urged that under O VIII R 6A the only limitation on the power of the courts before which a counter claim is set up to grant reliefs claimed therein is that the counter claim should not exceed the pecuniary jurisdiction of the court Sri Misra contended that even if the learned Additional District Judge who was exercising the powers of a Small Cause Court in respect of the suit was not competent to grant the reliefs claimed in the counter claim by virtue of the provisions of the Provincial Small Cause Courts Act as well as the Bengal Agra and Assam Civil Courts Act inasmuch as all the Additional District Judges have an unlimited jurisdiction so far as pecuniary limits are concerned, the counter claim set up by the applicant was clearly maintainable and the opinion expressed by the Court below is unsustainable Thus the Court below it was urged, has failed to exercise a jurisdiction vested in it by law in not entertaining the counter claim and excluding the same.

8 Sri S P Gupta learned counsel for the plaintiff-opposite parties on the other hand argued that the court below was exercising powers of courts of limited jurisdiction namely a Small Cause Court and not as a Court of ordinary civil jurisdiction It was urged that a court cannot entertain a counter-claim if it would not have jurisdiction over the subject matter of counter-claim if tried as a separate suit the counter-claim it was submitted being but a cross suit Mr Gupta maintained that as a Small Cause Court or a court exercising powers of a Small Cause Court under the Provincial Small Cause Courts Act could not grant any of the reliefs claimed in the counter claim the court below rightly excluded the counter-claim

9 For a proper appreciation of the submissions of the learned counsel it will be convenient to have a look at the relevant statutory provisions namely Rr 6-A to 6-F of O VIII of the Civil P C The same are extracted hereunder

6-A Counter-claim by defendant— (1) A defendant in a suit may in addition to his right of pleading a set off under R 6 set up by way of counter-claim against the claim of the plaintiff any right or claim in respect of a cause of action according to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired whether such counter-claim is in the nature of a claim for damages or not

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court

(2) Such counter-claim shall have the same effect as a cross suit so as to enable the Court to pronounce a final judgment in the same suit both on the original claim and on the counter-claim

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the Court

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints

6B Counter-claim to be stated— Where any defendant seeks to rely upon any ground as supporting a right of counter-claim he shall in his written statement state specifically that he does so by way of counter-claim

6C Exclusion of counter-claim— Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter claim but in an independent suit the plaintiff may at any time before issues are settled in relation to the counter-claim apply to the Court for an order that such counter-claim may be excluded and the Court may on the hearing of such application make such order as it thinks fit

6D Effect of discontinuance of suit— If in any case in which the defendant sets up a counter claim the suit of the plaintiff is stayed discontinued or dismissed the counter claim may nevertheless be proceeded with.

6E Default of plaintiff to reply to counter claim— If the plaintiff makes default in putting in a reply to the counter claim made by the defendant the Court may pronounce judgment against the plaintiff in relation to the counter claim made against him or make such order in relation to the counter claim as it thinks fit.

6F Relief to defendant where counter claim succeeds— Where in any suit a set off or counter claim is established as a defence against the plaintiff's claim and any balance is found due to the plaintiff or the defendant as the case may be the Court may give judgment to the party entitled to such balance

10 R 6A to R 6G of O VIII have been inserted by the Civil P C (Amendment) Act, 1976 In my opinion these rules merely recognize and give a concrete shape to the existing legal position as settled by a long line of decisions with regard to the true nature of a counter claim and the power of a court to entertain the same The rules by expressly providing for a counter claim and putting it at par with a cross suit merely make implicit what had hitherto been considered implicit as a result of judicial pronouncements. The new rules do not in my view create any new rights or vest the courts with a power which it did not previously possess. This is confirmed by the 27th Report of the Law Commission which reads as follows

64 There is at present no express provision for the filing of a counter claim except the rule-making power in Sec 128(2)(6) The present position has been summed up by Mulla thus

Though the Code does not provide for counter claims, there is nothing to prevent a Court from treating the counter claim as a plaint in a cross – Suit and hearing the two suits together provided the requisite court fee on the counter claim has been paid.

High Courts which exercise original jurisdiction have made rules which provide for counter claims (e g Bombay High Court Original Side Rules, 1957 Rule 137 et seq) We are of the opinion that in order to avoid multiplicity of proceedings and to dispel doubts that counter claim cannot be entertained, an express provision should be inserted in the Code for this purposes (Emphasis added) "

11 It is apparent that the amendments inserting the aforesaid rules in Order VIII have been made in pursuance of the recommendations of the Law Commission

12 Now the legal position as it existed right up to the time when the amendments were introduced in O VIII was that a counter claim being substantially and essentially a cross action and not merely a defence to the plaintiff's action, it must be of such a nature that the Court has jurisdiction to entertain it as a separate suit which inevitably implies that the Court must have jurisdiction over the subject matter of the cross claims if tried as a separate suit

13 Thus in Sri Vasudevandra Saraswathi Swami v Sridhara Swarama Moorthy AIR 1949 Mad 630 the Madras High Court held that a counter claim may be set up only in respect of claims as to which the party could bring an independent action in the Court in which the counter claim is brought. It placed reliance on the following observations made by Lord Dunedin in Williams Brothers v Agius Ltd. 1914 AC 510

"But this at least is certain, that no counter claim can be given effect to as a defence unless the Court dealing with the original action has also jurisdiction in the matter of the counter claim."

His Lordship of the Madras High Court also caught support from another decision of the Privy Council in the case of Bow McLachlan & Co v Ship Camosun, 1909 AC 597 where a question of Admiralty Jurisdiction arose and it was ruled by the Privy Council that to an action brought in an Admiralty Court a counter claim which ordinarily would not be triable by an Admiralty Court could not be put forward.

14 To the same effect are the observations made by our own Court in the case of Abdul Majid v Abdul Rashid reported in AIR 1950 All 201 It was held in this case that the essence of a counter claim is that the defendant should have a cause of action against the plaintiff. The counter claim is in the nature of a cross action and not merely a defence to the plaintiff's claim and consequently inasmuch as the defendant had no cause of action against the plaintiff and no separate action could be maintained on the basis thereof, the claim put forward by the defendant could not be characterised as a counter claim

15 In another decision of our Court in the case of Beni Madho v Gaya Prasad reported in 1890 All WN 168 it was ruled that a revenue court cannot entertain a claim to a set off unless such claim if made the subject of a suit would fall within its jurisdiction. Although the observations were made in regard to a set off the ratio of this decision applies with much greater force to a counter claim which is in essence but a cross-suit

16 The Calcutta and Andhra Pradesh High Courts have also taken the same view as has been enunciated in the decisions cited above (see Manick Lal Seal v K.P Chowdhury AIR 1976 Cal 115 and Imam Peer v S Khadija Bi, AIR 1965 Andh Pra 18 (Para 5)) In the latter of these decisions it was observed at page 19

"It is, however beyond doubt that a counter claim can be maintained only where the defendant is entitled to bring an independent action for the same relief in the same court in which the counter claim is laid."

17 The Supreme Court has also ruled in a decision reported in Laxmidas Dayabhai Kabrawala v Nanabhai Chunilal Kabrawala, AIR 1964 SC 11 that there is nothing in law which precludes a court from treating a counter claim as a plaint in a cross suit. It is significant

that these observations had been made at a time when there was no specific provision for a counter claim such as we now have in the shape of O VIII, R. 6-A of the Civil P.C. It is apparent that if the counter claim is to be treated as a cross-suit, the court in which the same is filed must obviously be competent to entertain the counter claim if tried as a separate action, i.e. the Court must have jurisdiction over the subject matter of the counter claim.

18 A review of the various authorities discussed above thus clearly leads to the conclusion that if the court in which the counter claim is set up would not have jurisdiction to try the same if filed as an independent action it will not be competent to entertain the counter claim. There appears to be a complete unanimity on this legal controversy among the various High Courts.

19 That a counter claim is in essence a cross suit has now been given a statutory recognition by the Legislature in the shape of Rr. 6-A to 6-G of O. VIII. Sub-rule (2) of R. 6A makes explicit what had been hitherto spelled out by judicial precedents. It states that a counter claim shall have the same effect as a cross suit. Sub-rule (3) also leads to the same conclusion. It provides that the plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant. Finally sub-rule(4) of R. 6-A makes the legal position abundantly clear by providing that the counter claim shall be treated as a plaint and governed by the rules applicable to plaints.

20 Regarding R. 6-A of O. VIII in its entirety it is clear that the counter claim shall be treated as a cross-suit and all the rules applicable to a suit shall mutatis mutandis apply to a counter claim. It must, therefore follow as a necessary corollary that the Court in which a counter claim is filed should be a court which has jurisdiction over the subject matter of the counter claim if tried as a suit.

21 The same conclusion flows from Rr. 6D to 6-G of O. VIII, R. 6-D states that counter claim may be proceeded with even if the suit of the plaintiff is stayed, discontinued or dismissed. Thus in the present case even if the claim of the plaintiffs fails the Court below shall have to proceed with the counter claim of the defendant applicant, which will lead to the conclusion that even though the Court below is exercising the powers of Small Cause Court it will have to act as a regular court in regard to the counter claim. This could not have been intended by the Legislature.

22 Now there can be little doubt that the Court below was trying the suit as a small cause. The suit had not come to the file of the learned Additional District Judge on the regular side but only by virtue of its having been invested with the powers of a Small Cause Court. And it was not disputed by the learned counsel for the applicant that the learned Additional District Judge exercising the powers of Small Cause Court could not grant any of the reliefs claimed in the counter claim set up by the applicant. What the learned counsel for the applicant contended was that as under the Bengal, Agra and Assam Civil Courts Act the Additional District Judge enjoyed powers of unlimited pecuniary jurisdiction, the court below was competent to entertain the counter claim even if it may not be otherwise competent to grant the reliefs claimed by the defendant applicant in the counter claim. In the counter claim the defendant applicant had claimed the relief of declaration that the deed of transfer dt. Oct. 10 1969 executed by her in favour of the plaintiffs be declared invalid and void ab initio and, in the alternative the plaintiffs be directed to execute a sale deed in respect of the house in dispute in favour of the defendant applicant. The applicant had also prayed that she be declared the absolute owner of the house in suit. It is indisputable that none of these reliefs could be granted by a Small Cause Court. Nor could it adjudicate the complicated questions of title raised in the counter claim. It is thus clear beyond doubt that if the counter claim had been filed as an independent action before the court below which was exercising the powers of a Small Cause Court in the matter the court below would not have had jurisdiction to try the same. Following the dictum laid down in the decisions cited above with which I am in respectful agreement I hold that the court below rightly excluded the counter-claim.

23 For the applicant, however Sri S.N. Misra placed strong reliance on the proviso to R. 6-A of O. VIII and contended that the only fetter which the Legislature intended to place

on the jurisdiction of the Court to entertain a counter claim is that it shall not exceed the pecuniary limits of the jurisdiction of the court. Learned counsel submitted that all that was required to be established by a defendant setting up a counter claim in so far as the jurisdiction of the court is concerned was that there should be a right or claim in respect of a cause of action accruing to the defendant against the plaintiff and that the counter claim should not exceed the pecuniary jurisdiction of the Court.

24 I am unable to agree The proviso to R. 6-A is not, in my opinion, exhaustive on the question of the jurisdiction of the court to entertain the claim. The proviso merely makes explicit what has been hitherto implicit, namely that the Court before which the counter claim is set up must have jurisdiction over the subject matter of the counter claim including pecuniary jurisdiction. Further sub-rule (1) of R. 6-A does not purport to define the jurisdiction of the Court before which the counter claim can be set up As mentioned above it merely makes an express provision for a counter claim by a defendant which right was previously spelled out only by judicial precedents referred to and discussed above Further the argument of Sri Misra ignores the other sub-rules of R 6A, particularly sub-rule (2) which makes it abundantly clear that the counter claim shall have the same effect as a cross suit and sub-rule (4) which states that the counter claim shall be treated as a plaint and governed by the rules applicable thereto These sub-rules clearly affirm and give statutory recognition to the existing rule that the court must have jurisdiction over the subject matter of the counter claim.

25 Sri Misra next placed reliance on S 23 of the Provincial Small Cause Courts Act which empowers a court of small causes to return the plaint to be presented to a court having jurisdiction to determine the title where the court finds that the right of a plaintiff and the relief claimed by him depend upon the proof or disproof of a title to immovable property or other title which such a court cannot finally determine It was urged by the learned counsel that even if, therefore a Small Cause Court did not have jurisdiction to grant the reliefs claimed in the counter claim by the defendant applicant it could return the plaint to be presented to a court having jurisdiction to determine the title

26 The argument does not appeal to me Sec 23 of the aforesaid Act does not, to my mind, throw any light whatever on the controversy It does not directly or indirectly touch the issue of the limits of jurisdiction of the court to entertain a counter claim. It merely provides that when a plaintiff sets up a right which depends upon the proof of a title to immovable property the court may at any stage of the proceedings, return the plaint. That does not, however lead to the conclusion that even though a Small Cause Court does not have jurisdiction to grant reliefs claimed by the defendant in a counter claim set up by him in a Small Cause Court, the latter shall entertain the same and proceed to determine finally the complicated questions of title to immovable property In my view far from supporting the applicant s contention, S 23 negatives the same and indicates that a Small Cause Court cannot entertain a counter claim if it implies proof or disproof of a title to immovable property which it cannot finally determine in a suit of the nature of small cause

27 I shall now briefly deal with the authorities cited by the learned counsel. The first decision cited by the learned counsel is reported in Vishwanath Lohia v Allahabad Bank, AIR 1979 All 12 It is difficult to see how this decision lends any support to the applicant. In this case the defendant in a suit filed a written statement making a counter claim therein along with an application to sue for counter claim in forma pauperis The lower court had rejected the counter claim on the ground that no court fee having been paid on the counter claim the same was not maintainable This Court held in a revision filed against the order passed by the lower appellate court that inasmuch as under R. 6A(2) a counter claim has been given the effect of a cross suit, the written statement filed by the defendant making a counter claim filed in forma pauperis fell within the purview of O XXXIII and hence the court below was found to consider the defendant s application for relief to sue in forma pauperis It could not have rejected the counter claim without disposing of that application

28 The next case relied on by the learned counsel is reported in AIR 1964 SC 11 (supra) That case also does not support the applicant s contention It merely says that a counter claim may be treated as a cross suit

29 Another decision cited by learned counsel is reported in TKVS Vidya poorachariya Sons v M.R. Krishnamachary AIR 1983 Mad 291 This again is of little assistance in resolving the controversy It merely holds that a counter claim cannot be separated from the disposal of the main suit claimed but must be considered as being one with it i.e it should be treated as part and parcel of the suit. The decision does not consider directly or by implication the issue with which I am concerned. Likewise another decision relied on by Sri Misra reported in Mohinder Singh Jaggi v Data Ram Jagannath AIR 1972 SC 1048 (para 24) lends no assistance The decision merely recognises the existing legal position. namely that a counter claim may be treated as a cross suit

30 To sum up the clear legal position which emerges from judicial precedents as well as an analysis of Rr 6-A to 6-G of O VIII is that if the court in which the defendant sets up a counter claim would not have jurisdiction over the subject matter of the counter claim if tried as a separate and independent action, it shall not have jurisdiction to entertain the counter claim. That being so the court below rightly excluded the counter claim set up by the applicant

31 It is however made clear that the observations which have been made in the judgment are confined to the legal controversy whether the court below had jurisdiction to entertain the counter claim set up by the defendant and this Court should not be taken to have expressed any opinion on the merits of the counter claim of the applicant.

32 In the premise the revision fails and is dismissed with costs The interim orders are hereby vacated.

Revision dismissed

1986 ALL L J 369

OM PRAKASH, J

Smt Narayan Devi Appellant v Harish Chandra and others Respondents

Second Appeal No 824 of 1974 D 1 11 1985 *

(A) Limitation Act (36 of 1963), Art. 64 — Adverse possession — Claim of — Possession must be adverse to knowledge of real owner

Adverse possession can be claimed only against the true owner To claim adverse possession one has to establish that the hostile possession was to the knowledge and in denial of the ownership of the true owner for more than 12 years Where no finding was recorded by the court that the party claiming title by adverse possession and his predecessor in-title remained in exclusive possession of the suit land to the knowledge of the true owner rather the court itself observed that user of the party appeared to be sufficient to amount to ouster of all other persons except the real owner it meant that the party did not exercise exclusive possession against the true owner

(Para 5)

(B) Limitation Act (36 of 1963), Art. 64 — Adverse possession — Carrying on stall of timber and drying of groundnuts on other s land and mortgaging it to Govt. deptt. without knowledge of true owner for purpose of taking loan — Do not constitute adverse possession.

(Para 6)

(C) Civil P C (5 of 1908), Ss. 100, 101 — Finding of fact — Suit for possession — Concurrent finding of lower Courts that defendant and his predecessor-in-title were never in possession of suit land — Finding being finding of fact has to be accepted in second appeal. (Para 7)

(D) Specific Relief Act (47 of 1963), Ss. 5, 6 — Suit for possession on basis of possessory title — Claim shifted to adverse possession by amending plaint — Relief initially sought being smaller claim, can be granted. (Civil P C (5 of 1908), O 7, R 7)

---

*Against judgment and decree passed by Sewak Saran Gupta, Civil Judge Mainpuri, D/ 18 2 1974

BD/BD/F444/86/AAJ/SNV

It is well settled law that when a bigger relief is claimed, small relief can always be granted. On the same analogy when a bigger claim is set up the smaller claim can always be considered (Para 7)

Where the plaintiff filed a suit for possession initially on the basis of possessory title but subsequently the plaint was amended and the claim was shifted from possessory title to adverse possession, then even if the plaintiff failed to establish title by adverse possession, the relief of possession can be granted on the basis of possessory title which falls short of adverse possession. The plaintiff has filed a suit for possession and that can be maintained on the basis of possessory title if not on the basis of adverse possession (Para 7)

(E) Specific Relief Act (47 of 1963), Ss. 5, 6 — Suit for recovery of possession — Plaintiff proving his prior possession or possessory title — Suit is bound to succeed against defendant who has failed to prove better title — Possessory title is good against everybody except the true owner — Suit for possession filed beyond six months but within 12 years — Not barred. (Limitation Act (56 of 1963), Art. 64) AIR 1970 SC 846 and AIR 1968 SC 1165, Rel on (Para 7)

Cases Referred	Chronological	Paras
AIR 1970 SC 846		7
AIR 1968 SC 1165		7
AIR 1964 All 383		5
AIR 1941 Oudh 436		5
AIR 1939 All 161	1938 All LJ 227	5
(1902) ILR 26 Bom 338		5

Kameshwar Prasad, for Appellant G C Gahrana, for Respondents

JUDGMENT — This is a second appeal against the judgment and decree dated 18-2 1974 of the learned Civil Judge Mainpuri arising out of a suit filed by the plaintiff respondent for recovery of possession of the suit land as described at the foot of the plaint.

2 The plaint case is that the suit land is situated in plot No 4273 The plaint was amended. Before amendment, the plaintiff claimed possessory title over the land in suit. After the amendment, the plaintiff claimed to have acquired ownership by adverse possession. The plaintiff claimed that he had purchased the suit land under a sale deed in the year 1959 from one Chhote Lal who acquired the same under a Sanad in the year 1949 from the Rani of Mainpuri. Proceedings under S 145 Cr P C were initiated by the plaintiff when the defendant No 1 made an attempt to dispossess the plaintiff on the basis of the sale deed dt. 30-5-1964 which was executed in his favour by the defendant No 2 The said proceedings were decided in favour of the defendant No 1 Realising that the proceedings under S 145 Cr P C would adversely affect his right, title or interest the plaintiff filed the suit for recovery of possession against the defendants

3 The suit was resisted by the defendant No 1 He claimed his own title and possession over the suit land. It was admitted that the suit land is situated in plot No 4273 The learned Munsif struck off several issues and held that the plaintiff had become owner of suit land by virtue of adverse possession. He also held that the predecessors of the plaintiff namely Chhote Lal was also the owner of the suit land. The learned Munsif, however took the view that the Rani Mainpuri was not the owner of the land in suit and she was not entitled to execute any Sanad in respect of that to Chhote Lal. The title and possession of the defendant No 1 and his predecessor were negatived by the learned Munsif. The dispute was then carried in appeal by the defendant No 1 to the appellate court. Then the learned Civil Judge held that the learned Munsif was wrong in holding that Chhote Lal was the owner of the suit land. He however affirmed the finding of the learned Munsif that the plaintiff was the owner of the suit land by virtue of adverse possession It was held by him that neither the plaintiff nor the defendant nor their predecessors had any title to the land. It was also held that the possession of the plaintiff and of his predecessor was sufficient to amount to ouster of all other persons except the real owner and, therefore, the plaintiff had perfected his title by adverse possession against the defendant and all others except the true owner This is how the appeal of the defendant was dismissed. Aggrieved by the said order the defendant No 1 has come up in second appeal.

4 I have heard the learned counsel for the parties at considerable length. Learned counsel for the appellant contended that the suit land

was lying vacant before the defendant No 1 started constructions thereon and, therefore the nature of possession as claimed by the plaintiff could not establish the adverse possession. Then it was argued that the plaint having been amended shifting the case from possessory title to adverse possession the plaintiff could not succeed in second appeal on account of possessory title and that the plaintiff can succeed only when the adverse possession is successfully proved by him It was also argued that the decision of the courts below that the defendant No 1 or his predecessors had no title or possession on the suit land is perverse On the other hand, the plaintiff respondent reiterated his adverse possession over the suit land. It was also argued that in any case the plaintiff is bound to succeed against the defendant who has no title to the suit land, on account of his prior possession or possessory title So the points for determination are —

1 Whether the courts below rightly held that the plaintiff acquired the ownership by adverse possession over the suit land?

2 Whether the plaintiff was in prior possession or acquired possessory title and, if so whether he can maintain the suit on that ground?

5 Both the courts below recorded a concurrent finding that the plaintiff acquired adverse possession. Ordinarily a concurrent finding given by the courts below deserves to be accepted. But the finding of the learned Civil Judge on this point appears to be inconsistent or incongruent and, therefore it is difficult to say that there is a concurrent finding of the courts below on the point of adverse possession which has to be accepted. What the learned Civil Judge has held is that the plaintiff and his predecessor in-title Chhote Lal both remained in possession over the suit land and the user alleged by the plaintiff and his predecessor in-title appears to be sufficient to amount to ouster of all other persons except the real owner and, therefore in my opinion the plaintiff respondent has perfected his title by adverse possession as against the defendant respondent and all others except the true owner " Adverse possession can be claimed only against the true owner To claim adverse possession one has to establish that the hostile possession was to the knowledge and in denial of the ownership of the true owner for more than 12 years. No finding has been recorded by the learned Civil Judge that the plaintiff and his predecessor in title remained in exclusive possession of the suit land to the knowledge of the true owner rather the Civil Judge himself observed that user of the plaintiff appeared to be sufficient to amount to ouster of all other persons except the real owner It means that the plaintiff did not exercise exclusive possession against the true owner What the learned Civil Judge wanted to hold is that the possession of the plaintiff gave rise to possessory title which was good against every one except the true owner This finding cannot amount a finding of adverse possession but this is merely a finding of possessory title It appears that the learned Civil Judge wrongly used the expression adverse possession having been acquired by the plaintiff. Otherwise also there is nothing on record to support the adverse possession of the plaintiff. The only evidence that came before the courts below was that Shri Chhote Lal used to carry on his Tal of timber and used to dry groundnut on the suit land. So far as the plaintiff is concerned, the court below observed that he had mortgaged the land in suit to Industry Department of Uttar Pradesh for having taken a loan of Rs. 4000/ on 12 2 1961 and then he got a reconveyance deed dated 16-7 1971 (Ext 5) executed in his favour from the department. The question is whether on the basis of this evidence it can be said that the plaintiff acquired adverse possession. Relying on the case of Lachhmi Nath v Bhola Nath AIR 1964 All 383 which was cited by the defendant, the learned Civil Judge took the view that for determining the question of adverse possession, the court has to take into consideration the facts of each case and the circumstances under which the right of adverse possession is claimed and then considering the possession of Chhote Lal and of the plaintiff he held that the user was sufficient to amount to ouster of all other persons except the real owner Before deciding the question whether on the basis of the possession of Chhote Lal and the plaintiff, the learned Civil Judge was right that the plaintiff acquired adverse possession, it is essential to look at the case law pertaining to adverse possession. In Framji Cursetji v Goculdas Madhowji, (1902) ILR 26 Bom 338 the party claiming adverse possession proved to have erected on the land in dispute

privy and sheds for cows, goats, fowls etc and a hut for Gharwala all, however structures of a flimsy and purely temporary character It was held that such user of the land by itself was insufficient to support a title therein by adverse possession. It was observed —

"User of this sort under similar circumstances is common in this country and excites no particular attention. It is neither intended to denote or understood as denoting on the one side or the other a claim to the ownership of the land, and where this, and no more is the case it would be wrong to hold that a claim by adverse possession has been made out"

The above decision was followed by a Division Bench of this Court in Asa Ram v Ram Chandra 1938 ALJ 1227 (AIR 1939 All 161) This Court ruled down as follows —

The mere tethering of cattle and storing of logs and the construction of foundations of a house begun many years back, but not visible on the surface on a piece of waste land, is no indication of possession which is intended to be adverse to the title of the proprietor of the land.

In Iqbal Ali v Humayun Qadar AIR 1941 Oudh 436 the Oudh Chief Court observed —

Where after the falling of a house into ruins for a long time the land presents the appearance of a mere ahata with a dalan bounded on all sides by the houses of the neighbours such acts of possession by the adverse possessors (members of the real owner s family) as tethering of cattle using the land as a playground cooking food on ceremonial occasions and even planting trees cannot possibly arouse the notice of the real owner even if he be living in the same town, much less would they constitute adverse possession against him for he has been living away from the land since a long time "

6. From the above authorities, it is clear that the plaintiff could not acquire title by adverse possession simply because his predecessor carried on Tal of timber and dried groundnuts on the suit land and he himself mortgaged the suit land to the Industry Department without the notice of the true owner for the purpose of taking loan. So neither from the record nor from the finding of the learned Civil Judge it is established that the adverse possession was exercised by the plaintiff and his predecessor in title against the real owner The simple finding of the learned Civil Judge that the user of Chhote Lal and the plaintiff appeared to be sufficient to amount to ouster of all other persons except the real owner cannot perfect the title of the plaintiff by adverse possession, even though he has held so

7 Then the question is whether the plaintiff was in prior possession of or whether he acquired possessory title over the suit land? Both the courts below concurrently found that the defendant and his predecessor in title were never in possession of the suit land. This finding has to be accepted being a finding of fact. Moreover this finding is fully supported by the record. Enough evidence has come that the plaintiff and his predecessor in tide Chhote Lal remained in possession over the suit land. The plaintiff himself had mortgaged the suit land inter alia to Industry Department of the U P State Government on 12 2 1961 and then got the reconveyance deed executed on 16-7 1971 (Ext 5) This evidence fully established the prior possession of the plaintiff or his possessory title Then the question is whether the plaintiff can maintain the suit on the basis of his possessory title The submission of the learned counsel for the appellant is that initially the suit was filed by the plaintiff on the basis of possessory title but then the plaint was amended and claim was shifted from possessory title to adverse possession, and, therefore the plaintiff can succeed only when the adverse possession is established. I do not see any force in this submission There is well settled law when a bigger relief is claimed, small relief can always be granted. On the same analogy when a bigger claim is set up the smaller claim can always be considered. The plaintiff claimed the relief of possession on the basis of the adverse possession. Even if the plaintiff fails to establish adverse possession, the relief of possession can be granted on the basis of possessory title which falls short of adverse possession. The plaintiff has filed a suit for possession and that can be maintained on the basis of possessory title if not on the basis of adverse possession. There being a concurrent finding of fact of the courts below that both the plaintiff and the defendant did not acquire title to the suit land and the plaintiff having successfully proved his

prior possession or possessory title the suit for possession is bound to succeed against the defendant, who has failed to prove a better title than the possessory title of the plaintiff. In my opinion, long possession by itself is sufficient to enable the plaintiff to ask for possession against the defendant, who does not prove his own title. In other words, possessory title is good against every body except the true owner. The only requirement of such a suit would be that the plaintiff should be able to prove his own exclusive possession over the property and the suit must be brought within 12 years from his dispossession from the same as envisaged by Art. 64 of the Limitation Act. In Somnath Berman v Dr S P Raju, AIR 1970 SC 846 the Supreme Court ruled down that the sec 9 of Specific Relief Act 1877 (now Section 6 under the new Act 1963) is in no way inconsistent with the position that as against a wrong doer prior possession of the plaintiff, in an action of ejectment, is sufficient title even if the suit be brought more than six months after the act of dispossession complained of and that the wrong doer cannot successfully resist the suit by showing that the title and right to possession are in a third person. Therefore a person having possessory title can get a declaration that he was the owner of the land in suit and an injunction restraining the defendant from interfering with his possession. It is therefore clear that a suit for possession can be maintained on the basis of possessory title even after the expiry of the period of six months. In Nair Service Society Ltd v K. C Alexander AIR 1968 SC 1165 the Supreme Court clarified that the correct position is that if S 9 of the Specific Relief Act is utilised, the plaintiff need not prove title and the title of the defendant does not avail him. When however the period of six months has passed, questions of title can be raised by the defendant and if he does so the plaintiff must establish a better title or fail. In other words, the right is only restricted to possession only in a suit under S 9 of the Specific Relief Act but that does not bar a suit on prior possession within 12 years and title need not be proved unless the defendant can prove one. So a suit for possession is not barred even if filed beyond six months but within 12 years and in such a suit based on possessory title the plaintiff is not entitled to prove any title unless one is proved by the defendant. The defendant No 1 having failed to prove any title the plaintiff's suit for possession will surely succeed on the basis of possessory title which is fully supported by the record. So the judgment and decree of the learned Civil Judge deserve to be confirmed subject to the modification that not on the basis of adverse possession but on the basis of the possessory title the plaintiff is entitled to the decree of possession in respect of the suit land.

8 The appeal is therefore dismissed accordingly with costs. The judgment and decree of the learned Civil Judge dt 18-2 1974 are confirmed subject to the modification that the suit of the plaintiff for possession is liable to be decreed on account of possessory title and not on the basis of the adverse possession.

Appeal dismissed

1986 ALL. L. J 373

V K MEHROTRA AND V N KHARE JJ

Vyapar Mandal Society Nehtaur Bijnor Petitioner v Nagar Palika Nehtaur and another Respondents

Civil Misc. Writ Petn No 1222 of 1983 D/ 9 9-1985

(A) U P Municipalities Act (2 of 1916), Ss. 131 and 132 — Objections to proposals to levy tax not considered on merits on ground that they had not been filed within time — Such non-consideration, will not vitiate levy 1978 All LJ 25 (SC) Rel on. (Para 15)

(B) U P Municipalities Act (2 of 1916), S 134(2) — Resolution of Board directing imposition of tax — Non-mention of specific date in resolution with effect from which tax was being imposed — Levy not invalid when point of commencement of levy can be definitely known having regard to language used in resolution. (Para 22)

Cases Referred Chronological	Paras
1978 All LJ 25 AIR 1978 SC 306 1978 Tax LR 2182	13 15
AIR 1978 Andh Pra 30	9
AIR 1976 All 264	9
AIR 1974 All 39	8
AIR 1973 All 67 (FB)	9

AIR 1968 SC 98 21
(1922) 2 All ER 567 (1922) 2 TLR 416 (CA)
Hadkinson v Hadkinson 8

Rishi Ram and Virendra Singh for Petitioner S C Budhwar Anil Sharma and R H Zaidi for Respondents

V K MEHROTRA, J — Nehtaur in District Bijnor has a Municipal Board which was superseded by the State of U P in the year 1976 That supersession still continues District Magistate Bijnor was appointed Administrator of the Board under the provisions of the U P Municipalities Act The Nehtaur Municipal Board was charging toll tax In the year 1980 it was proposed that the toll tax be abolished and be replaced by Octon duty The proposal along with the draft bye laws was published in a daily newspaper Rashtra Vedana on January 11 1980 Vyapar Mandal society Nehtaur which claims to be looking after the interest of all the traders of Nehtaur town filed an objection on January 21 1980 to the proposal On March 10 notice was issued to it by the Executive Officer of the Municipal Board saying that the objection would be heard on March 12 1980 According to the society which has approached this court as petitioner in the present petition under Article 226 of the Constitution the objection was not considered and without regard to the provisions of sections 131 to 133 of the Act proposed rules were published in the U P Gazette on June 18 1983 This became known to the Society on July 16 1983 which again filed an objection on July 30 1983 Even these objections could not be considered and without following strictly the procedure contemplated by the provisions of Section 134 a final notification imposing octroi duty was published in the U P Gazette on October 8 1983 Aggrieved the petitioner came to this Court and filed the petition on October 22 1983 challenging the levy Accompanying the petition was an application for interim protection This application was directed to come up for orders on November 21 1983 because the Municipal Board which the petitioner was required to serve put in appearance and filed a counter affidavit in pursuance of the notice served upon it The prayer for stay was considered on November 23 1983 This Court directed that the impugned notification published in the U P Gazette dated October 8 1983 shall not be given effect to It however left it to the Municipal Board to impose octroi duty afresh in accordance with law Parties exchanged further affidavit thereafter

2 The petitioner says that the interim order of this Court was disregarded It therefore moved on application for punishing the respondents for committing breach of the interim order That application is Contempt Case No 167 of 1984 Another application of the petitioner with the same prayer is Contempt Case No 193 of 1984 According to the petitioner the breach of the order of this court by the respondents was deliberate and they deserved to be punished for having committed contempt of this Court The petitioner says that the respondent board is not entitled to be heard in defence of the levy of octroi in the present petition as it has not purged itself of that contempt The respondents say that they have not committed any contempt and had made realisation of octroi only during the period when no interim order was in operation They say that the objection that they should not be heard is not sustainable We shall advert to this a little later

3 From the affidavit exchanged between the parties and the documents filed therewith it appears that on January 5 1982 the district Magistrate Bijnor made an inspection of the Municipal Board He felt that the imposition of octroi did not follow the pattern of model bye laws made by the State Government He therefore directed that fresh proposals be prepared in accordance with the model bye laws On March 26 1982 fresh proposals were prepared and submitted to the Officer In charge/Administrator of the Board The Officer In-charge signed it on March 27 and thereafter on March 31 1982 the Administrator accepted the proposal under a special resolution All this is contained in annexure S A 5 to the supplementary affidavit sworn by Sri Nasim Iqbal executive officer of the Board on December 1 1983 This was followed by publication of the proposals in the daily newspaper Rashtra Vedana of July 29 1982 The publication so made is annexure SA 1 to the same affidavit It recites that the earlier proposals framed on January 11 1980 were turned down by the Administrator as

they were inconsistent with the model bye laws and fresh proposals that were prepared were being published inviting objections within 15 days of the date of publication No objections were filed within this period

4 On August 31 1982 a special resolution under section 132(1) of the Act adopted in respect of these proposals was submitted to the Prescribed Authority namely the Divisional Commissioner Muradabad Division for directing its publication under section 133 (2) of the Act Annexure S A 6 to the same affidavit is that communication

5 From annexure 7 to the writ petition it appears that the State Government had directed on September 9 1982 the Municipal Boards that proposals for imposition of a new tax or increase in the rates of an existing tax should not be undertaken in view of the elections to Local Bodies which were likely to be held soon The direction was operative till March 20 1983 On March 21 1983 relaxation was made by the State Government in view of poor financial condition of Local Bodies This appears from annexure CA II to the Counter Affidavit sworn on November 20 1983 by Hare Krishan Paliwal On May 31 1983 the Administrator of Nehtaur Municipal Board wrote to the Commissioner through Annexure SA IV to the counter affidavit of Naseem Iqbal requesting him to direct publication of the proposal submitted to him earlier On June 18 1983 the proposal was published by the Commissioner in the U P Gazette inviting objection within a month A copy of the publication in annexure 4 to the writ petition On July 29 the Administrator passed a special resolution under section 134(2) of the Act saying that the octroi duty will be imposed with effect from the date of its publication in the official Gazette A copy of this resolution is annexure 1 to the second supplementary counter affidavit sworn by Wasiddin on behalf of the Board On August 17 1983 this resolution of July 29 was forwarded to the Commissioner for publication and as noticed earlier the proposal was finally published in the Official Gazette on October 8 1983

We have heard Sri Rishi Ram for the petitioner and Sri S C Budhwar for the Municipal Board at some length in this case Before noticing the submissions made by them on the merits of the petition we would first deal with the plea that the respondent board was not entitled to be heard by us for so long as it did not purge itself of contempt

6 Sri Rishiram has put his objection thus On November 23 1983 this Court after considering the detailed facts stated in the affidavit exchanged between the parties till then and hearing counsel for both the parties passed an interim order saying that though it will be open to the respondents to impose octroi duty fresh in accordance with law they shall not give effect to the notification levying octroi published in the U P Gazette dated October 8 1983 On December 2 1983 an application was made by the Municipal Board to recall this order On January 18 1984 Hon'ble Mr Justice B N Sapru who had passed the earlier interim order said that the petition itself may be heard finally on merits He did not vacate or modify the interim order On March 30 1984 the petition was dismissed for want of prosecution but this Court did not say anything specifically about the continuance or otherwise of the interim order The petitioner made an application on April 3 1984 for recalling the order of dismissal and on April 19 1984 the application was allowed The writ petition was restored to its original number On May 1 and 2 1984 the petitioners representatives met the Prabhari Adhikari and the Executive Officer of the Board asking them not to charge octroi duty as there was an interim order operating in the case Yet octroi duty was realised by the Board between May 6 and 16 1984 The application registered as contempt case No 167 of 1984 was then filed by the petitioner for punishing H K Paliwal the Officer In-charge and the Executive Officer and on May 31 1984 another application was made for taking action for contempt as the respondent was persisting in its action This was registered as contempt case No 193 of 1984 Charge was framed by this Court against the Officer In-charge on August 14 1984 and on August 30 1984 notice was also issued to the Board to show cause why it should not be punished for committing contempt of this Court On October 10 1984 three weeks time as prayed by the counsel for the respondents was allowed to them for filing counter affidavit No counter affidavit was filed in contempt case No 193 though it was filed in Case No 167 of 1984 earlier on May 1

1985 after the petitioner had made an application in the present writ petition on April 25 1985 that the respondents should not be heard by this Court in the writ petition as they were in contempt A reply was filed to this application on May 7 1985 in paragraph 12 whereof it was incorrectly alleged that the counter-affidavit had been filed in contempt case No 193 of 1984 which was referred to in paragraph 2 of the affidavit of the petitioner filed in support of its application The counsel for the Board however clarified that the reference to the counter-affidavit in paragraph 12 of the reply was to the counter-affidavit filed in contempt case No 167 of 1984

7 The plea made by Sri Rishi Ram is that inasmuch as the facts stated in the affidavit filed in contempt case No 193 of 1984 in which alone notice had been issued to the Municipal Board have remained uncontroverted as the Board had not filed any counter-affidavit therein this Court should take the view that the respondents were in contempt and should not hear them on the merits of the petition until they purge themselves of contempt It is urged that the injunction of this Court contained in its order of November 23 1983 was in the nature of mandamus saying that the respondents will not give effect to the notification published on October 8 1983 This direction could not be ignored by the respondents during the period that the order dated March 30 1984 dismissing the petition for want of prosecution was in operation even though on April 19 1984 when the writ petition was restored to its original number no specific order restoring the interim order dated November 23 1983 was passed

8 In M G Gupta v Agra University AIR 1974 All 39 petitioner Madan Gopal had filed an application in a writ petition filed in this Court by him challenging some resolutions of the Executive Council of the Agra University seeking the striking out of the defence of the University This was on the ground that the University was persisting in placing reliance upon its resolutions dated October 1 1971 in respect whereof notice had been issued to some members of the Executive Committee for having committed contempt of this Court Those members had submitted unqualified apology on the basis whereof the notices issued to them were discharged by this Court The argument on behalf of the petitioner-Gupta was that the respondent University was not entitled to be heard on account of its persistent reliance upon that resolution This Court after considering a large number of authorities including the decision of the Court of Appeal in the case of Hadkinson v Hadkinson (1952) 2 All ER 567 came to the conclusion while rejecting the application of Gupta that denial of hearing to a party in contempt is an extreme penalty which is enforced only in those cases where an act of a party in contempt impedes the course of justice or that justice in the cause cannot be done without compliance of the Court s order and further that where the party in contempt purges its contempt by obeying the orders of the Court or by undergoing the penalty imposed by the Court the party should not be denied hearing This Court noticed the fact that no order of conviction had been passed against the alleged contemners nor did they persist with the contemptuous act

9 Without going into the question whether the interim order dated November 23 1983 of this Court automatically revived after the dismissal of the writ petition had been set aside and it was restored to its original number on April 19 1984 in respect whereof reliance has been placed by Sri Rishi Ram on a Division Bench decision of the Andhra Pradesh High Court in the case of N R Reddy v N P Reddy AIR 1978 Andh Pra 30 and Sri Budhwar on the Full Bench decision of this Court in Abdul Hamid v Karim Bux AIR 1973 All 67 and Nagar Mahapalika Lucknow v Ved Prakash AIR 1976 All 264 we may observe that admittedly no order has yet been passed by this Court holding the contesting respondents in the present writ petition to be guilty of having committed contempt of this Court Besides it has been asserted in the counter affidavit sworn by Mohammad Tayyab on behalf of Nagar Palika Nehtaur in the application filed by the petitioner with the prayer that the Nagar Palika should not be heard in this case until it is purged of the contempt that a copy of the stay order was served on the Nagar Palika on November 24/25 1983 whereafter the recovery of Octroi Duty was stayed The writ petition was dismissed on March 30 1984 and a copy of the order restoring it to its original number was served by the petitioner along with a letter on May 2 1984 This letter was placed before the Sub Divisional Magistrate in the evening that day and immediate orders were passed by him

for staying the recovery of the Octroi Duty. On May 3, 1984 recovery of Octroi Duty was stayed. A special messenger was sent by the Nagar Palika to its counsel Sri now Mr. Justice B. L. Yadav who was then the Chief Standing Counsel for the State of U. P. in this Court to elicit his opinion in the matter. On May 5, 1984 the opinion of Sri Yadav to the effect that the restoration of the writ petition did not have the effect of automatically reviving the stay order was sent to the Board relying upon which recovery of Octroi Duty was re-started. On May 16, 1984 a questionnaire whether the stay order dated November 23, 1983 was still in force with the reply in the affirmative obtained from this Court was filed. Recovery of octroi duty was stopped from that date. These assertions prima facie establish that there was no wilful disobedience on the part of the Nagar Palika of the interim order of this Court. We are not examining the matter any further for we feel that in these circumstances it is difficult to hold that the Nagar Palika has disentitled itself to a hearing by us in this case on account of the alleged contempt committed by it.

10. It is common ground that the District Magistrate, Bijnor was the Administrator of the Board after the supersession of Nehtaur Nagar Palika under the provisions of the U. P. Municipalities Act. The petitioner says that to the initial publication of proposals dated January 11, 1980 which had been published in Rashtra Vedna by the Prabhari Adhikari who was not the Administrator, an objection was filed on January 21, 1980. These objections were never considered which was a breach of the mandatory provisions of law. But what was worse was that the proposals which are claimed by the Nagar Palika to be fresh proposals were never framed by the Administrator who alone was competent to do so being the Board on account of the supersession of the Board. The publication made in Rashtra Vedna on that date was by the Prabhari Adhikari. However when we look at the publication dated July 29, 1982 (Annexure S. A. 1 to the supplementary affidavit of Naseem Iqbal sworn on December 1, 1983) we find in the recital that the earlier proposals of January 11, 1980 were turned down by the Administrator as they were inconsistent with the model bye laws. Annexure S. A. 5 to the same supplementary affidavit discloses that fresh proposals prepared on March 22, 1982 had been accepted by the Administrator on March 31, 1982 under a special resolution. This amounted to framing of fresh proposals by the Board through a special resolution. We find it difficult to accept the submission that apart from what was stated in Annexure S. A. 5 any further evidence should have been produced by the Nagar Palika to establish that the initial proposal of January 11, 1980 had been dropped by the Board under the orders of the Administrator. The form of the copy of the specific order to that effect or an affidavit of the Administrator himself in these proceedings. After all, authenticity of the records of a public body, which is produced from proper custody, is not to be easily doubted. We find in S. 330 of the U. P. Municipalities Act a provision to that effect when it says that a copy of an order etc. duly certified by the Record Keeper is to be received as a prima facie evidence of its existence and shall be admitted as evidence of the matter and transactions therein recorded. In the present case copies of the proceedings have been filed on affidavit. The bald allegation that these proceedings should be treated to be prepared for the purposes of this case is sought to be established by only referring to the circumstance that they were not filed with the counter affidavit initially filed by the Nagar Palika and that these documents have been filed with a supplementary affidavit. We would need some stronger reason to discard the documents filed by the Nagar Palika as fabricated for the purposes of the case or to accede to the submission that the circumstances of this case justify an enquiry into the genuineness of these documents and examination in Court in that context of the then District Magistrate, Administrator of the Nagar Palika and its Prabhari Adhikari. We find no reason to take the view that documents were subsequently prepared to defeat the petitioner's case.

11. Naseem Iqbal with whose supplementary affidavit these documents have been filed is a responsible officer being the Executive Officer of the Nagar Palika. Annexure S. A. 4 to his affidavit is a copy of the letter sent by the District Magistrate, Bijnor (Administrator of Nehtaur Nagar Palika) and bears his signatures as do annexure S. A. 5 and annexure S. A. 6. The Prabhari Adhikari of the Nagar Palika, whose signatures are also found on Annexures S. A. 5 and S. A. 6 is also a Sub Divisional Officer. The suggestion that these responsible officers would be a party to any subsequent preparation of documents for purposes of a particular case in the absence of any cogent evidence on record is only to be rejected as fanciful. We have no doubt that the subsequent proposal which was published

on July 29 1982 was framed afresh under a special resolution by the District Magistrate that is the Administrator of the Board

In respect of these proposals under S 131 of the Act a grievance is made that they were not published in accordance with law It is said that S 94 of the Act read with Schedule III contemplated that it should be published in the prescribed form contained in the Schedule not only in a Hindi News Paper having circulation in the area but also on the Notice Board of Nagar Palika Nehtaur and of Collectorate Bijnor This is stated in paragraph 8 of the writ petition Paragaph 6 of the counter-affidavit sworn by the Prabhari Adhikari of the Nagar Palika Sri H K Pahwal specifically mentions that the proposals and rules etc were published in the newspaper dated July 29 1982 in pursuance of the provisions of S 131 etc and the rules were also placed on the Notice Board for information to the public at large The Executive Officer (Sri Naseem Iqbal) of the Nagar Palika has also stated in paragraph 4 of the supplementary affidavit dated December 1 1983 that after cancellation of the initial proposals another publication was made in the newspaper Rashtra Vedana dated July 29 1982 and in paragraph 6 that the proposals were all published and placed on the Notice Board of the Nagar Palika Also that S 131(3) read with S 94 had not been violated The rejoinder affidavit sworn on November 22 1983 only re-states in paragraph 6 what had been stated in the writ petition on the basis of record like the statement in paragraph 8 of the writ petition The statement in the counter affidavit and the supplementary affidavit sworn by Sri Pahwal and Naseem Iqbal respectively is also based upon perusal of records It is obvious that in this state of evidence it is not possible to accept the fact that publication had not been made in accordance with S 94 read with Schedule III of the Act

12 Even otherwise the fact that publication of the fresh proposals was made is not in doubt The copy of the publication in the Hindi newspaper is Annexure S A 1 The publication of the proposals is to be made in the manner prescribed in S 94 by virtue of S 131(3) What is to be published is the proposals framed under sub-section (1) and the Draft Rules framed under sub-section (2) along with a notice in the form set forth in Schedule III Annexure S A I shows that the proposals as well as the Draft Rules were published in vernacular in the form contemplated by Schedule III The requirement of S 94(3) is that the publication is to be made in Hindi in a paper approved by the State Government and where there is no such paper the publication is to be made by pasting upon the Notice Board of the Municipal Board office and the Collectors office It has not been suggested that Rashtra Vedana is not a paper which answers the description of a newspaper envisaged by S 94 There is therefore no failure in observance of the rule relating to publication of the proposal

13 Before us it is common ground between the parties that an objection dated July 16 1983 to the proposed levy of octroi duty was filed under the signatures of one Sri Pradeep Kumar Jain Advocate on July 20 1983 The stand of the respondents is that these objections were barred by time having not been filed within a month of the publication dated June 18 1983 and were rejected as such by the Commissioner What has been urged by Sri Rishi Ram on behalf of the petitioner is that after the publication on July 29 1983 an objection was admittedly filed on July 30 1983 It should have been considered on merits Reliance has been placed by him in particular upon the decision of the Supreme Court in Tharoo Mal v Puran Chand Pandey AIR 1978 SC 306 (1978 All LJ 25) In that case the levy under challenge was of Theatre Tax by Municipal Board Pilibhit Tharoo Mal the appellant before the Supreme Court was partner in a firm carrying on the business of running a cinema house called Jai Talkies He had not filed any objection to the proposals initially made which were submitted to the Prescribed Authority that is Commissioner of Rohilkhand Division under S 132(4) It was proposed to levy the tax at the rate of Rs 25/ per show The Commissioner felt that the rate was too high He returned the proposals to the Board which then reduced the tax to Rs 15/ per show

14 A proviso was added to S 132(2) by U P Act No 27 of 1984 Under it the revised proposals are not to be published in case the rate of tax is reduced The Board did not publish the proposal to reduce the rates

However on September 16 after the reduction of the rates on August 28 1972 owners of some cinema houses including Tharoo Mal sent objections to the imposition of any theatre tax at all These proposals were not forwarded to the Prescribed Authority by the Board when it sent the revised proposals to the Prescribed Authority on September 18 1972 The Prescribed Authority sanctioned the modified proposal on October 31 Ultimately after publication of the draft rules on November 18 1972 inviting objections thereto within 30 days the rules were sanctioned under S 134 and tax was imposed with effect from April 16 1973 after a Gazette notification made on April 14 1972 The Supreme Court in effect negatived the submission that the objection dated September 16 1972 should have been forwarded to the Prescribed Authority and should have been considered by it by holding that the failure on the part of the Board to sent the objection to the Prescribed Authority would not invalidate the imposition of reduced tax but it observed that on its wide language S 132(4) would cover any objection whether made within a fortnight or beyond a fortnight provided they are sent in before the matter is submitted before the Prescribed Authority and that there was no statutory bar against the Prescribed Authority itself considering the objections which may be filed before it if the interest of justice so requires

15 In the present case we find it stated in paragraphs 9 10 and 12 of the writ petition that the objections filed by the petitioners on July 30 1983 had not been considered In the counter affidavit sworn by Paliwal however it has been stated in paragraph 6 that the objection was time barred and was otherwise not tenable and as such it was dismissed by the Commissioner Further that the draft proposals had been approved after considering the time barred objections of the petitioner dated July 30 1983 by the Commissioner The so called discrepancy between this statement and the assertion contained in paragraph 6 of the counter-affidavit sworn by Naseem Iqbal where it has been stated inter alia that time barred objections were filed in the office of the Commissioner which were dismissed as time barred is of no real consequences because the clear stand of the respondents appears to be that the objections were time barred and they were dismissed on consideration by the Commissioner We may also add that even assuming that these objections were not considered on merits on the ground that they had not been filed within time such non consideration will not vitiate the levy in view of what has been observed by the Supreme Court in Tharoo Mal s case (1978 All LJ 25)

16 Sri Rishi Ram pointed out that there was variance in rates of octroi duty chargeable on certain items as given out in the publication made in Rashtra Vedana of July 29 1982 and the Gazette publication dated October 8 1983 Our attention was invited in particular to the disparity evidenced by omission of any rates in the Rashtra Vedana in regard to item No 15 at page 4 and items Nos 2 and 3 at pages 5 and 6 in respect whereof rates were published in the Gazette notification Counsel for the respondent Board has pointed out that it was a printing error in Rashtra Vedana We have no reason to doubt this stand of the respondent Board More so because July 29 publication was the initial publication and sub-section (2) of S 132 would not be attracted to it The rates in respect of these items which are being enforced are admittedly those which were mentioned in the publication of June 18 1983 and as stated in paragraph 6 of the counter affidavit of Paliwal the proposals as initially enforced were published on the Notice Board We may observe that in annexure 3 to the writ petition which is a copy of the objection filed on July 30 1983 in respect of the publication dated June 18 1983 there is no objection to the effect that proposed rates in respect of some items were not disclosed by the Board

17 At item No 11 of category V (that is *(Matter in vernacular hence not printed — Ed)*) the rate is mentioned at Rs 20/ per quintal It has been stated by Sri S C Budhwar on behalf of the respondent Board that it is a mis print for Rs 2/ per quintal which is the actual rate and which alone would be enforced under the impugned notification In view of this statement we have no doubt that the Board would not charge octroi duty at a rate in excess of Rs 2/ per quintal in regard to this item for so long as the notification of October 8 1983 is the basis for realisation of octroi duty thereon In our opinion the levy cannot

be said to be vitiated on account of this printing error

18 Counsel for the petitioner says that no resolution under S 134(2) was passed by the Board and that in case the resolution dated July 29 1983 (part of annexure II S C 1 to the second supplementary counter-affidavit sworn by Wasiuddin on behalf of the Board on December 19 1984) is treated to be such a resolution it was invalid because it did not mention a specific date with effect from which tax was being imposed

19 Annexure II S C 1 is a copy of the letter dated August 17 1983 sent by the Officer in-charge Nagarpalika Nehtaur to the Commissioner Moradabad Division Moradabad It has been mentioned in it that no objection had been received to the publication made in the Gazette dated June 18 1983 Since publication under S 134(2) was to be made necessary documents including six copies of the special resolution of the Board were being sent with the request that after his sanction the Prescribed Authority may get it published in the Gazette The copy of the special resolution which forms part of this annexure mentions that the date of publication of the rules etc in the Gazette is fixed as the date with effect from which the duty was being levied The argument is that the statement in this resolution that imposition shall be with effect from the date of publication is not sufficient compliance of the provisions of S 134(2) of the Act

20 Section 134 is in these terms

134 Resolution of board directing imposition of tax — (1) When the proposals have been sanctioned by the Prescribed Authority or the State Government the State Government after taking into consideration the draft rules submitted by the board shall proceed forthwith to make under S 296 such rules in respect of the tax as for the time being it considers necessary

(2) When the rules have been made the order of sanction and a copy of the rules shall be sent to the board and thereupon the board shall by special resolution direct the imposition of the tax with effect from a date to be specified in the resolution

21 In Zila Parishad Moradabad v Kundan Sugar Mills AIR 1968 SC 98 the Supreme Court was called upon to examine the validity of the circumstances and property tax by the erstwhile District Board of Moradabad S 119 of the U P District Boards Act 1922 which was akin to S 134(2) of the U P Municipalities Act contemplated that upon receipt of the copy of the rules sent under the preceding section the board shall by special resolution direct the imposition of the tax with effect from a date (to be specified in the resolution) not less than six weeks from the date of such resolution This Court had allowed the writ petition The Supreme Court dismissed the appeal of the Zila Parishad It was found that no resolution under S 119 had been passed Yet the levy of the tax was sought to be justified on the ground of procedure adopted being in accordance with law on account of sub section (3) of S 120 of the U P District Boards Act which was akin to S 135(3) of the U P Municipalities Act and which made issuance of a notification under sub section (2) to be conclusive proof of the fact that the tax had been imposed in accordance with the provisions of the Act

22 The Supreme Court decision does not assist the petitioner in the present case where a special resolution under S 134(2) is found to have been adopted The object of such a resolution is only to make definite the date from which levy would stand imposed The fact that the duty would stand imposed with effect from the date that the draft rules are finally published in the Gazette which finds a mention in the special resolution adopted under S 134(2) makes the imposition operative from a definite point of time It cannot be said that without mention of a specific date the imposition cannot be made definite in regard to its commencement No decision was brought to our notice in which it may have been held that non mention of a specific date in the resolution under S 134(2) would make the levy invalid even though the point of commencement of the levy can be definitely known having regard to the language used in the resolution We are clearly of opinion that the language in which the resolution under S 134(2) in the instant case is couched fulfils the object behind a resolution under S 134(2) and the levy of octroi duty by the respondent Nagar Palika cannot be said to be contrary to law

23 We have found that the necessary procedural steps which were imperative to be adopted were in fact followed by the Nehtaur Nagar Palika in the imposition of octroi duty and no legal infirmity attaches to that imposition The petitioners have not made out a case for interference by this Court with it

24 The writ petition fails and is dismissed but we leave the parties to bear their own costs The interim order shall stand discharged

Petition dismissed

1986 ALL L J 381

B D AGARWAL J

Chandra and another Appellants v Budha and others Respondents

Second Appeal No 2569 of 1972 D/ 9 5 1985*

(A) Administration of Evacuee Property Act (31 of 1950), Ss 7(1), 46 — Bar of suit under S 46 — Suit for injunction restraining opposite party from interfering with possession — Opposite parties invoking bar of suit on ground of sale of property by authority under the Act — Property not declared evacuee property by following procedure under S 7(1) — Bar is not attracted (Civil P C (1908) S 9)

Where a suit was filed by persons in possession of certain land for injunction restraining opposite parties from interfering with their possession and opposite parties invoked bar of suit under S 46 of the Act on ground that the Managing Officer Evacuee Property had purported to sell the land to them but it was found that property was never declared evacuee property by issuing notice under S 7(1) the bar of S 46 could not be invoked by opposite parties and the suit would be maintainable Despite the failure of plaintiffs to establish their title as Sirdars they could on strength of their continuous possession resist interference from opposite parties who had no better title than plaintiffs (Para 12)

Section 46 bars the jurisdiction of the civil court in certain matters This does not operate in the absence of notification of evacuee property under S 7(1) of the Act In accordance with S 7(1) where the Custodian is of opinion that any property is evacuee property he may after causing notice thereof to be given in the prescribed manner to the persons interested and after holding such enquiry into the matter as the circumstances of the case permit pass an order declaring any such property to be evacuee property The notice has therefore necessarily to be given to the persons interested and in respect of the property sought or claimed to be declared as evacuee property The declaration could be made in respect of such property meaning hereby the property whereof notice to persons interested has been given In the event of notification as required under this provision being made a person aggrieved may take the matter to an appeal under S 24 and a revision may also be brought to the Custodian General These provisions do not get attracted in the absence of the notification under S 7(1) (Para 11)

(B) Civil P C (5 of 1908), Ss. 100, 101 — U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 331(1 A) — Suit for injunction restraining opposite party from interfering with possession instituted in Civil Court — Second appeal — Objection as to bar of civil court s jurisdiction under S. 331(1A) of U P Act — Decision by courts below on this issue against appellant not giving rise to any failure of justice — Objection is untenable in second appeal (Para 15)

Cases Referred	Chronological	Paras
1982 All LJ 178	1982 All CJ 99	13
1981 UP LT NOC 74	1981 All CJ 148	14
1981 UP LT NOC 130	1981 All CJ 138	14
AIR 1972 SC 2299		13
AIR 1968 SC 169		11
AIR 1967 SC 106		11
AIR 1967 SC 1244		11
AIR 1966 SC 1438		11
AIR 1961 SC 1790		12
1956 All LJ 858		13

Y S Saxena for Appellants M A Qadeer for Respondents

---

*Against judgment and decree of V P Kalra Addl Civil Judge Moradabad D/ 8-8 1972

JUDGMENT — This is defendent Second Appeal

2 The dispute relates to plot No 123 corresponding to new plot No 176 comprising of an area of 39 acres situate in village Mahmoodpur Nawabwali Tehsil Sambhal district Moradabad One Majid Ali Khan was admittedly the zamindar of the area where this land is situated The character of the land was that of an intermediary s grove Majid Ali Khan migrated to Pakistan sometime during 1952 55 The suit giving rise to this Second Appeal was instituted by the plaintiff respondents on May 21 1962 alleging that the plot in question ceased to retain the character of grove and that they had been in possession for nearly 16 years preceding the suit On Feb 19 1951 it was further alleged they had obtained a patta of this land from Momtul Hasan Kanungo of the Zamindar for the sake of regularisation of their possession With effect from July 1 1952 they became the sirdars of this land which was not declared evacuee property at any stage On Aug 18 1960 the Managing Officer Evacuee Property however purported to sell this land to defendants Nos 5 and 6 — the appellants — and on the basis thereof these defendants threatened and intended to disturb the possession of the plaintiffs The relief sought is declaration to the effect that the sale claimed by these defendants is void and permanent injunction is also claimed to restrain the defendants from interfering with the possession of the plaintiffs over the said land

3 In defence it was asserted that the land in question was declared evacuee property after issue of notice under S 7(1) of the Administration of Evacuee Property Act 1950 to Majid Ali Khan This was followed by sale dated Aug 18 1960 by the Managing Officer Evacuee Property to defendants Nos 5 and 6 It is denied that there was any patta executed in favour of the plaintiffs by or on behalf of the zamindar or that they have been in possession and it is also maintained that the plot retains the character of grove The bar of jurisdiction of the civil courts on the basis of S 46 of the Administration of Evacuee Property Act 1950 and S 331 of the U P Zamindari Abolition and Land Reforms Act is also pleaded

4. The trial Court decreed the suit on Sept 22 1965 being of opinion that the land in dispute had not been declared evacuee property after issue of notice required under S 7(1) of the Administration of Evacuee Property Act in respect of this land to persons concerned The jurisdiction of the civil court was not barred The plaintiffs have been in possession and part of this land has been in their use as abadi also where they have all kinds of miscellaneous agricultural uses Majid Ali Khan retained no interest in the property subsequent to the date of vesting Defendants 5 and 6 could not claim to have acquired any right by the alleged purchase made from the Managing Officer Evacuee Property on Aug 18 1960 The appeals filed by the defendants against this decree were allowed on Aug 5 1968 The defendants preferred Second Appeal No 2548 of 1968 The learned single Judge who decided this appeal found that there had been no notification made under S 7 of the Administration of Evacuee Property Act in respect of the plot in dispute and the jurisdiction of the civil courts on the ground of S 46 of that Act could not be claimed to be barred The plea in regard to the bar of jurisdiction under S 331 of U P Act 1 of 1951 was left over and the appellate Court was directed to redecide the appeals on merits in accordance with the law Subsequent to this remand dated September 19 1969 the lower appellate Court on Aug 9 1972 dismissed the appeals confirming thereby the findings arrived at by the trial Court

5 Aggrieved the defendants 5 and 6 have preferred this Second Appeal

6 Indisputedly the land in question comprised in Plot No 123 corresponding new plot No 176 covering the area of 39 acres is recorded in Zeman 14(4) of the U P Land Records Manual in the Khatauni and Khasra of 1356 and 1359 fasli The entry thus pertains to an intermediary s grove In the khasra of 1359 fasli (Ex 8) specification as to the existence of six mango trees one Jamun tree and one Babul tree on this land is also found Majid Ali Khan was admittedly the intermediary vis-a vis the area where this land is situate In consequence on July 1 1952 which is the date of vesting under the U P Zamindari Abolition and Land Reforms Act 1950 this land shall be deemed to be settled with Majid Ali Khan aforesaid in capacity as Bhumidhar under S 18(1)(a) of the Act

7 Learned counsel for the defendant appellants argued that there is no evidence on the record to establish the execution of patta by or on behalf of the zamindar in favour of the plaintiffs respondents as claimed by the latter The trial court observes in this connection that the patta has not been produced in original nor was secondary evidence given in proof thereof It was also not made out from any evidence oral or documentary in the Court below that Momul Hasan the person alleged to have executed the Patta in capacity as the karinda had the power or authority to do so for and on behalf of the zamindar In the absence of these primary facts being brought on record the inference as to the existence of Patta could not legitimately be drawn on the basis merely of the order dt Feb 27 1953 passed by the Naib Tehsildar directing mutation of the plaintiff respondents over the said land vide Ex 3 There is force consequently in the contention for the appellants that in face of there being challenge from their side as to the primary facts concerning the factum and validity of the Patta in question there could be no assumption made in favour thereof on the mere ground that mutation was directed by the Naib Tehsildar

8 Assuming therefore that the plaintiff respondents did not acquire right or title to the land on the strength of any patta in their favour by or on behalf of zamindar dt Feb 19 1951 the question still remains whether they have been in possession over the disputed land as claimed by them and if so the effect thereof The finding on the point of possession concurrently reached by the courts below is in favour of the plaintiff respondents In this connection both oral and documentary evidence has been taken into account Nothing could be suggested in fact for the appellants in derogation of the finding reached on this score In the Khasra of 1362 fasli (Ex 7) the possession recorded is of the plaintiffs showing 26 acres as covered by grove and the rest as abadi The khatauni of 1363 fasli (Ex 6) also records their possession P W Bashir Ahmad one of the plaintiffs came to the witness-box and referred to the user by him for miscellaneous agricultural purposes over this land He was corroborated by P W Behari Chandra defendant said on the other hand that they had been put in possession by the Managing Officer on the execution of the sale and that the Dakhalnama was executed in proof thereof No such Dakhalnama has seen the light of the day in this case The contention for the plaintiffs also finds support from the observations made by the Advocate Commissioner as appearing from his report dt 14th April 1963 relied by the trial court vide Paper 30/31-C It was noticed that the southern portion of the land covering about 16 acres was in use as abadi and the northern portion contained trees etc It is admitted by the other side as well that the plaintiffs have had their houses to the immediate south For the appellants there was an application made on April 12 1985 before this Court to the effect that the plaintiff respondents have since migrated to Pakistan and on the basis thereof it was argued before me by the learned counsel that the relief claimed for injunction has become infructuous I am unable to agree even if the plaintiffs have gone to Pakistan there is nothing on the record to bear out that the land in question is not retained in their possession through their servants agents or otherwise There has been no change brought about in so far as the possession over the disputed land is concerned

9 Reliance for the appellants is placed by the learned counsel on the certificate of sale dt Oct 20 1960 issued to them by the Managing Officer Evacuee Property vide Ex A1 stating that this land had been sold in their favour on Aug 18 1960 It was argued that thereby the appellants have acquired title to the land The plaintiff respondents have maintained throughout that this land was not declared evacuee property at any stage and consequently no question arose of the same being sold as of right by the Managing Officer Evacuee Property The notice dt Jan 21 1955 (vide Ex B 2) claimed to have been issued under S 7(1) of the Administration of Evacuee Property Act is material in this connection A perusal thereof reveals that it was addressed to Majid Ali Khan and it was confined to his interest in the zamindari property alone The property specified therein is

"Zamindari in village Mohd Pur Nawabwali Mohal Salim K K No 1 Share 1638/98304 area 309-14 L R 260"

This denoted therefore that the property notified thereunder was the interest of Majid

Ali Khan as intermediary to the extent of 16 38 Sehams in the particular Mohal and there is absolutely no reference made to the specific plot No 123 corresponding to the new plot No 176 or any portion thereof This is also so revealed from the order made by the Assistant Custodian (Rural) dt 4th March 1955 vide Ex 1 wherein he declared the aforementioned zamindari property as evacuee property The notification was neither in respect of plot No 123 concerned in the present dispute nor was notice given to any of the plaintiff respondents

10 Controversy on this aspect of the alleged bar of S 46 of the Administration of Evacuee Property Act is concluded by the decision of a learned single Judge dt 19th of Sept 1969 between the parties It was held that the interest as bhumidhar in a particular piece of land is distinct from the right to compensation accruing due to the vesting of the right title and interest to an intermediary in an estate and further that the plot in question was not notified under S 7(1) It was also observed that where the property has not been notified under S 7 the jurisdiction of the civil court will not be excluded This was concluded then by stating The lower appellate court was therefore wrong in holding that the suit out of which this appeal arises was barred by the provisions of S 46 of the Act This should leave no room to doubt that a decision on this aspect has already been arrived at between the parties and the same has become final This apart on merits also I do not find substance in the contention advanced for the appellants in this respect

11 Section 46 of the Administration of Evacuee Property Act 1950 bars the jurisdiction of the civil court in certain matters This does not operate in the absence of notification of evacuee property under S 7(1) of the Act In accordance with S 7(1) where the Custodian is of opinion that any property is evacuee property he may after causing notice thereof to be given in the prescribed manner to the persons interested and after holding such enquiry into the matter as the circumstances of the case permit pass an order declaring any such property to be evacuee property The notice has therefore necessarily to be given to the persons interested and in respect of the property sought or claimed to be declared as evacuee property The declaration could be made in respect of such property meaning thereby the property whereof notice to persons interested has been given In the event of notification as required under this provision being made a person aggrieved may take the matter to an appeal under S 24 and a revision may also be brought to the Custodian General These provisions do not get attracted in the absence of the notification under S 7(1) The law is well established that no property of any person could be declared to be evacuee property unless that person had also been given a notice under S 7 vide Dr Zafar Ali Shah v Assistant Custodian Evacuee Property Jhansi AIR 1967 SC 106 In the absence of notice to the petitioners in that case it was held that their interest in the house could not have vested in the Custodian In Ram Gopal Reddy v Addl Custodian Evacuee Property Hyderabad AIR 1966 SC 1438 it was reiterated that where the property admittedly belonged to the evacuee and the person filing the suit claimed to be the transferee from the evacuee the suit would certainly be barred in view of S 46 of the Act In that case it was admitted as stated in para 4 that the appellants had received notice from the Deputy Custodian under S 7(1) but had neglected to appear before him and it was in those circumstances that the Deputy Custodian declared the property to be evacuee property The material fact distinguishing the instant case is that therein the appellant had received notice under S 7(1) and it was not in dispute that the property in question was evacuee property Likewise in Haji Esmail Noor Mohammad and Co v Competent Officer Lucknow AIR 1967 S C 1244 the facts denoted that the interest of the evacuee in the partnership business vested in the Custodian and this vesting was preceded by issue of notice to the firm under S 7(1) informing the firm that the Kanpur property thereof would be taken possession of S 7 empowers the Custodian to determine what properties are evacuee properties The Custodian determines that after notice to persons interested and after such enquiry as the circumstances of the case permit In this connection he may decide both questions of law and of fact but the operation of the provisions contained in Ss 24 27 and 46 does not arise in the absence of such adjudication

by the Custodian vide Custodian of Evacuee Property Punjab v Jafran Begum, AIR 1968 SC 169

12 Assuming as contended for the appellants before me that this land was held as grove by the intermediary namely Majid Ali Khan, the position in view of S 18(1)(a) of the U P Zamindari Abolition and Land Reforms Act with effect from July 1 1972, shall, as stated above be that he would be deemed to have become the bhumidhar thereof. The right, title and interest of Majid Ali Khan in capacity as intermediary vested in the State by virtue of notification under S 4 read with S 6 of this Act, but the interest created in capacity as bhumidhar so far as grove land is concerned is distinct from the proprietary right as intermediary that vested in the State The bhumidhari right which is created by S 18 is a new right altogether and is independent of the proprietary interest as intermediary which was extinguished as has been laid down in Ram Sheo Ambar Singh v Allahabad Bank Ltd. Allahabad, AIR 1961 SC 1790 It follows, therefore that notice under S 7(1) of the Administration of Evacuee Property Act had to issue in respect of plot No 123 corresponding to the new plot No 176 in dispute, deemed to be held as bhumidhari by Majid Ali Khan, before this could be declared evacuee property No such notice having admittedly been issued to him in respect of this property it could not be held to be evacuee property The bar of S 46 consequently cannot be invoked by the appellants. It is not open to them to contend therefore that the plaintiff respondents should have gone in appeal under S 24 or in revision under S 27 instead of approaching the civil Court for declaration that the transaction of sale is void or for permanent injunction for that matter The property in question having not been declared evacuee property in accordance with law the sale dated 18th Aug. 1960 relied for the appellants is of no legal effect.

13 True it is as found above that the plaintiff respondents failed to establish that they had obtained patta from or on behalf of the zamindar of Feb 19 1951 The effect is that they could not claim to have become sirdars under S 19 of the Zamindari Abolition and Land Reforms Act with effect from July 1 1952 But despite this since the plaintiff respondents have been found to have continuously been in possession they are competent to maintain the claim for permanent injunction besides declaration as against those not shown to have a better title Despite the failure of the plaintiff respondents to establish their title as Sirdars, they can on the strength of their possession resist interference from the defendant appellants who have no better title than to the land in suit vide M Kallappa Setty v M V L Rao AIR 1972 SC 2299 Smt. Savita v Nuja, 1956 All LJ 858 and Daya Nand v Harpal 1982 All CJ 99 (1982 All LJ 178)

14 A feeble argument was then also advanced for the appellants to the effect that the suit before the civil Court should have been taken as barred in view of S 331(1) of the U P Zamindari Abolition and Land Reforms Act The argument is that the suit instituted should have been in the revenue Court. This need not detain us long Sub-sec (1A) of S 331 makes it clear that an objection on this score cannot be entertained at this stage unless it was taken in the Court of the first instance at the earliest possible opportunity and unless there has been a consequent failure of justice This has been interpreted as analogous to the provisions contained S 21 C P C and S 11 of the Suits Valuation Act. An objection as to the want of jurisdiction on this account was raised before the trial Court no doubt in the present case but there is nothing to suggest that the decision on the issue by the Courts below against the appellants has given rise to a failure of justice. A necessary condition in this behalf thus remains unfulfilled and in the absence thereof the plea is untenable vide Sabha Chand v Narain Singh, 1981 All CJ 138 (1981 UPLT NOC 130) and Baldeo v Beni Lal Kedia, 1981 ACJ 148 (1981 UPLT NOC 74)

15 The appeal consequently fails and is dismissed with costs to the plaintiff respondents.

Appeal dismissed.

1986 ALL. L. J 386

H N SETH Actg C J AND
A. N VERMA J

Dr Amarendra Kumar Dubey Petitioner v Principal S N Medical College Agra and others Respondents

Civil Misc Writ Petn No 10640 of 1983 D/ 5-11 1985

U P State Universities Act (10 of 1973), S 28 — Notification dt. 15-12-82 under — Admission to post graduate Course in Medical Colleges in U.P — Non availability of eligible candidates from college in question to fill 75% seats reserved for them — Vacancies should not be kept vacant but must be filled up by candidates from other Medical Colleges

Paragraph 4 of the notification dt. 15-12 82 issued under S 28 merely provides for a preference being given to the candidates from the medical college in question in regard to 75% seats in various Post Graduate Courses in any particular Medical College The Notification does not appear to convey that where the candidates from college in question to fill the 75/ vacancies in a Post Graduate course in any particular speciality are not available the said seats should remain unfilled and that in respect of such seats the cases of the candidates from other medical colleges who are bona fide residents of Uttar Pradesh and are eligible for admission to the Post Graduate course should not be considered Main idea underlying the stipulation is that where suitable internal candidates are available 75% vacancies should be filled on the basis of merits by them and remaining 25/ seats should be filled on merits by internal as well as external candidates The stipulation clearly implies that in case the eligible internal candidates are not available for admission to fill all the 75% seats reserved for them then the unfilled seats as also the remaining 25% seats should be filled from amongst the eligible bona fide residents of the State who have passed their M.B B S Examination from other Medical Colleges

(Para 7)

H. N SETH, Actg C. J. — Aggrieved by the action of the Principal of the S N Medical College Agra (hereinafter referred to as the Agra Medical College) in not admitting the petitioner to the M S Course in Orthopaedics in the year 1983 petitioner Amarendra Kumar has approached this Court for relief under Art 226 of the Constitution

2 The Government of Uttar Pradesh had sanctioned four seats for admission to M S Course in Orthopaedics at the Agra Medical College Notification dated 15th of Dec 1982, issued by the State Government, in exercise of its powers under S 28(5) of the U P State Universities Act laid down that 75% seats in M S Courses in various Medical Colleges in the State stand reserved for candidates who pass their M B B S examination from the same college (internal candidates) Remaining 25% seats are to be filled on the basis of merits by the internal as well as candidates who have done their M B B S Course from other Medical Colleges (external candidates) It also provided that only such students, who secure at least 55% marks in their M B B S examination would be eligible for admission to the M S Course

3 In due course in the year 1983 the Principal of the Agra Medical College invited applications for filling four vacancies in M S Course in Orthopaedics A number of candidates including the petitioner who fulfilled the requisite qualification applied for admission to the said course As no candidate who had passed his M B B S examination from the Agra Medical College who had secured 55% marks or above was available the Principal did not fill the three vacancies in the M S course in Orthopaedics He admitted only one Dr Subodh who had done his M B B S course from a Medical College other than the Agra Medical College and kept the remaining three vacancies unfilled

4 According to the petitioner in case no candidate who had done his M.B B S Course from Agra Medical College was available, the Principal was bound to fill all the four vacancies by candidates who had done their M B B S course from other Medical Colleges. As, amongst the candidates from other Medical Colleges, the petitioner stood third in order of merit, the respondents were bound to admit him to the said M S course He therefore, filed the present petition claiming relief under Art. 226 of the Constitution on 2nd Sept. 1983 and obtained an interim order to the effect that in the meantime, he be provisionally

admitted to the M.S in Orthopaedics course of the Agra Medical College provided there was no other external candidate who had secured higher percentage of marks and had pressed his claim for this purpose In the result, the respondents permitted the petitioner to pursue the M S course in Orthopaedics on provisional basis

5 The respondents put in appearance and contested the relief claimed in the writ petition, mainly on the ground that as per Government Notification dt. 15-12 1982, issued by it under S 28(5) of the U P State Universities Act the petitioner who was an external candidate was not entitled to be accommodated as against the three vacancies which were reserved for the internal candidates According to the respondents, if sufficient number of candidates, who had done their M B B S course from the Agra Medical College are not available to fill 75% seats reserved for them, those seats cannot be filled by the external candidates, who are to be accommodated only against remaining 25% seats In this case only one seat in M S Orthopaedics course was available for accommodating external candidates and Dr Subodh, who as compared to the petitioner stood higher in merits had been accommodated against that seat, hence petitioner is not entitled to the relief claimed by him

6. Having considered the submission made by the parties we are of opinion that aforementioned stand of the respondents is not tenable

7 Keeping in view the recommendations made by the Medical Council of India, the State Government issued a notification, dt. 15th Dec 1982 in exercise of its power under S 28(5) of the U P State Universities Act laying down the criteria for the manner in which the admission to post graduate courses (Degree and Diploma) in various Medical Colleges in the State are to be made from amongst the bona fide residents of the State it provides that no candidate shall be eligible for admission to post graduate course who has obtained less than 55% marks in the M.B B S examination calculated in the manner indicated therein and that such admissions are to be made only on the basis of merit. The Rules do not purport to make any bona fide resident of Uttar Pradesh, who has done his M.B B S Course from any of the Medical Colleges in the country, ineligible for admission to the post Graduate Degree Course in various Medical Colleges of the State. Para 4 of the said Notification merely provides for a preference being given to the internal candidates in regard to 75% seats in various Post Graduate Course in any particular Medical College This Notification issued by the State Government does not appear to convey that where the internal candidates to fill the 75% vacancies in a Post Graduate course in any particular speciality are not available the said seats should remain unfilled and that in respect of such seats the cases of the external candidates who are bona fide residents of Uttar Pradesh and are eligible for admission to the Post Graduate course should not be considered. Main idea underlying the stipulation is that where suitable internal candidates are available 75% vacancies should be filled on the basis of merits by them and remaining 25% seats should be filled on merits by internal as well as external candidates The stipulation, in our opinion, clearly implies that in case the eligible internal candidates are not available for admission to fill all the 75% seats reserved for them, the unfilled seats as also the remaining 25% seats should be filled from amongst the eligible bona fide residents of the State who have passed their M.B B S examination from other Medical Colleges As in the instant case no eligible internal candidate was available for filling any of the vacancies in Post Graduate course in Orthopaedics in the Agra Medical College, all the four seats had to be filled in order of merit from amongst the bona fide residents of the State who were eligible for the purpose and who had done their M B B S from other Medical Colleges The respondents were accordingly bound to consider petitioner's application for admission to Post Graduate course in the speciality of Orthopaedics as against all the four seats that were available for the purpose

8. Learned counsel for the Principal, Agra Medical College then contested petitioner's assertion that amongst the candidates seeking admission to M.S. Orthopaedics course he stood third in order of merit and was entitled to be adjusted against one of the four seats. According to him various candidates who applied for admission to the M S course in Orthopaedics had been ranked thus —

1	Dr Irwin Kumar	61/ Marks
2	Dr Subodh Kumar	58 67%
3	Dr J K. Singh	58 63%
4	Dr R. N Singh	58 6%
5	Dr Sajjad Hussain	57 48%
6	Dr A. K. Dubey (Petitioner)	57 00%

9 In as much as the petitioner ranked 6th in order of merit he was not entitled to be admitted as against any of the four seats in Post Graduate (Degree) course in Orthopaedics.

10 As already stated, the respondents had admitted only Dr Subodh Kumar to the M.S course in Orthopaedics Apart from the petitioner two external candidates namely Irwin Kumar and Dr J K Singh had, by means of separate petitions, questioned the validity of the action of the Principal in not admitting them to the M S course in Orthopaedics. Both of the them obtained interim orders enabling them to pursue their studies for the M.S courses in Orthopaedics at the Agra Medical College Dr R. N Singh and Dr Sajjad Hussain, who as compared to the petitioner stood higher in merit did not question the action of the respondents in not admitting either of them to the M.S course in Orthopaedics The entire term is over and even the Final Examination of the candidates who had taken admission for the M S course in the year 1983 has taken place It thus appears that even though Dr R.N Singh and Dr Sajjad Hussain, who as compared to the petitioner stood higher in merits (they) were not interested in pursuing the post graduate course in Orthopaedics and that they had given up their claim for admission to the said course Once Dr R.N Singh and Dr Sajjad Hussain gave up their claim, the petitioner became entitled to be accommodated in the said M.S course as against the fourth vacancy In the circumstances, the second submission made on behalf of the respondents also cannot be accepted

11 It may be mentioned that during pendency of this petition, the respondents were also directed to permit the petitioner to appear in the M.S Examination in Orthopaedics, which took place in the month of Sept. 1985 but then they have not declared his result so far In as much as we have found that the petitioner was entitled to be admitted as against the fourth seat in the M.S. Orthopaedics course of the Agra Medical College his provisional admission, made in pursuance of this Court's interim order has to be treated as regular admission and his result in respect of the M.S Examination held in the month of Sept. 1985 has got to be declared

12 In the result, the petition succeeds and is allowed The respondents are directed to treat the provisional admission of the petitioner to the M.S Course in Orthopaedics made in pursuance of this Court's order dt. 2nd Sept. 1983 as regular admission to the said course and to declare the result of the examination taken by him in the month of Sept 1985 The petitioner is entitled to his costs

Petition allowed.

1986 ALL. L. J 388

B L YADAV J

Thakur Dass, Petitioner v Deputy Director of Consolidation Jhansi and others, Respondents.

Civil Misc Writ Petn. No 2312 of 1978 D/ 11 10-1985

U P Zamindari Abolition and Land Reforms Act (1 of 1951), Ss 155, 164 — Bhumidar transferring possession of land for purpose of securing payment of loan advanced — Transaction would be deemed to be a sale and not a mortgage

Where a bhumidar transferred possession of land with a view to secure payment of money advanced, giving rise to a pecuniary liability the transaction would be deemed to be a sale in view of S 164 and not a mortgage Case law discussed. (Para 14)

No bhumidar shall have right to mortgage any land belonging to him where possession of the mortgaged land is also transferred It obviously means that in case possession is transferred then it shall cease to remain mortgage rather it would become outright sale and in case possession is not transferred by a bhumidhar in that case it may remain a mortgage In other words a mortgage can be created by a bhumidhar but not by transfer of possession, but otherwise To put it in other language a simple mortgage of a bhumidhari land is allowed (where the possession is not transferred) but if possession is also sought to

be transferred that is prohibited. The provisions of S 155 creates a bar against bhumidar who wants to transfer possession in favour of a mortgagee But a bhumidar can create a mortgage without transfer of possession. Ss. 164 and 155 are not contradictory to each other but operate in different fields. (Para 13)

Cases Referred	Chronological Paras
1983 All LJ 331 (1)	5 6 10 12
(1980) 6 All LR 312	6 11
1976 Rev. Dec 326 (BR)	5
1971 Rev Dec 270	5 10

R C Srivastava, Pradeep Chandra, V S Singh and L. N Pande for Petitioner Shyam Narain Standing Counsel, for Respondents.

ORDER — This petition under Art. 226 of the Constitution is directed against the order dt. 26-2 1978 passed by the Deputy Director of Consolidation, Jhansi allowing the revision under S 48 of the U P Consolidation of Holdings Act filed by respondents 4 and 5

2. The facts of the case are few and simple Plot No 845 was in dispute which was recorded in the basic year in the name of Ganga Prasad, father of the petitioner whereas during the consolidation Partal respondents 4 and 5 were found to be in possession. An objection was filed by respondents 4 and 5 under S 9AA(2) of the U P Consolidation of Holdings Act claiming to be the bhumidar on the basis of the provisions of S 164 of the U P Zamundari Abolition and Land Reforms Act, (for short Act) As Ganga Prasad, father of the petitioner being bhumidar transferred the possession of the land in their favour by two deeds dt. 19-5-72 and 19-6-72 just with a view to secure payment of money advanced which may give rise to pecuniary liability and thus they were entitled to be treated as vendees subject to conditions of Ss 154 and 164 of the Act and they prayed that their names may be entered as Bhumidars and the name of the petitioner or his father may be expunged

3. The claim of respondents 4 and 5 was contested by the petitioner who denied the aforesaid transaction and alleged that respondents 4 and 5 were not in possesion nor they were delivered possession in view of the aforesaid transaction nor they were entitled to the benefit of S 164 of the Act

4. The Consolidation Officer decided the case against the petitioner But the Settlement Officer (Consolidations) allowed the appeal of the petitioner and the revision filed by respondents 3 4 and 5 was allowed by the impugned order dt. 16-2 78 which has been challenged by the petitioner by way of this petition

5. Sri R. C Srivastava, learned counsel for the petitioner urged that respondents 4 and 5 were not entitled to the benefit of S 164 of the Act as the deeds dt. 19-5-72 and 19-6-72 did not amount to sale nor respondents 4 and 5 were in possession. He placed reliance on Deonandan v Amardeo Singh 1971 Rev Dec 270 Sukhambar v Panwaroo 1976 Rev Dec 326 (BR) and also on Sati Prasad v Dy Director of Consolidation Kanpur 1983 All LJ 331 (1)

6 Sri Shyam Narain learned counsel appearing on behalf of the contesting respondents 4 and 5 on the other hand urged that respondents 4 and 5 were entitled to the benefit of S 164 of the Act and possession was transferred to them by virtue of the alleged mortgage deeds dt. 19-5-72 and 19-6-72 and possession was also delivered to them as they had advanced a sum of Rs. 6000/ on two occasions and with a view to procure the payment of money advanced, the possession was delivered to them, hence it was a sale for all practical purposes and as contemplated by S 164 of the Act. He placed reliance on Sati Prasad v Dy Director of Consolidation Kanpur 1983 All LJ 331 (1) (the same case which was relied upon by the learned counsel for the petitioner) Sri Shyam Narain also placed reliance on Hira Lal v Dy Director of Consolidation Allahabad, (1980) 6 All LR 312

7 The main point which requires consideration is as to whether the transfer of possession by the petitioner in favour of respondents 4 and 5 for the purposes of securing payment of money advanced (by respondents 4 and 5) would amount to sale in view of the provisions of S 164 of the Act It is better to set out the statutory provisions of S 164 of the Act, which is as follows —

164 Transfer with possession by bhumidhar to be deemed a sale — Any transfer of any holding or part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any

payment of money advanced or to be advanced by way of loan, and existing or future debt or the performance of an engagement which may give rise to a pecuniary liability shall notwithstanding anything contained in the document of transfer or any law for the time being in force be deemed at all times and for all purposes to be a sale to the transferee and to every such sale the provisions of Ss 154 and 163 shall apply

8. In the instant case it is a fact that the petitioner's father obtained a sum of Rs 6000/ on two occasions from respondents 4 and 5 and for the purposes of securing payment of money advanced, petitioner's father transferred the possession of the land in dispute in favour of respondents 4 and 5 There is no denying the fact that the amount received by the petitioner was by way of loan which has given rise to pecuniary liability Hence this transaction would certainly mean to a sale subject to the restrictions contained in S 154 of the Act which only means that no transfer can be made to a person who as a result of the transfer would become a tenure holder of the land for an area more than 12 50 acres. In the instant case there was no such allegation that respondents 4 and 5 became entitled to land of more than 12 50 acres. Hence respondents 4 and 5 became bhumidhar and the transaction amounted to sale

9 There is however a restriction that a bhumidhar cannot mortgage the land with possession as contemplated by S 154 of the Act. I am of the view that Ss 164 and 155 of the Act are not contradictory to each other It is well known principle of interpretation that all the parts of statutes must be harmoniously interpreted so as to assign some specific meaning and so that all the parts of the statute may work together satisfactorily with the object sought to be attained. In the instant case what S 155 prohibits is that a bhumidhar cannot create a mortgage with possession The legislature has enacted S 164 with a view that in case a bhumidhar has obtained some payment of money advanced or to be advanced by way of loan, and existing or future debt or the performance of an engagement which may give rise to a pecuniary liability in that event if the possession is transferred by the bhumidhar to the transferee as satisfaction for payment of that loan, that would amount to a sale I am, therefore of the opinion that Ss. 155 and 164 operate in different fields and there is no conflict between the provisions of these two sections. In view of the facts as found proved by the Deputy Director of Consolidation the father of the petitioner having received the amount mentioned above and to secure payment of the same had transferred the possession to respondents 4 and 5 hence that became sale It is, however important to mention that the period mentioned in the two deeds dt. 19-5-72 and 19 6-72 has also expired and hence the petitioner or his father had no right left in the land in dispute

10. In Deonandan v Amardeo Singh (1971 Rev Dec 270) (supra) relied upon by the learned counsel for the petitioner there in lieu of the interest of money advanced the defendant was to cultivate the land and he could not get the land sold for non payment of the loan Hence the facts of that case would not help the petitioner as under that circumstances of the case the defendant was not held to be entitled to the benefit of S 164 of the Act. Similarly learned counsel for the petitioner relied upon Sati Prasad v Dy Director of Consolidation, Kanpur (1983 All LJ 331(1)) (supra) But that case helps respondents 4 and 5 rather the petitioner In that case it was held that where a bhumidhar mortgages his land with possession and the mortgagee enters into possession, that would be deemed to be sale in view of S 164 of the Act Hence this case would also not help the petitioner

11 In Hira Lal v Dy Director of Consolidation Allahabad (1980(6) All LR 312) (supra) relied upon by the learned counsel for the contesting respondents, the facts were similar and possession was transferred by the bhumidhar for the purposes of securing payment of loan advanced and it was held that the transaction amounted to sale and it was not a mortgage and the transaction was held to be covered by S 164 of the Act. Similarly in the instant case also the father of the petitioner who was bhumidhar having obtained loan twice transferred the possession of land to respondents 4 and 5 with a view to secure payment of the money advanced Hence that transaction would become a sale Accordingly the case of Hira Lal applied to the present case with all fours.

12 Sri Shyam Narain, learned counsel for respondents 4 and 5 also relied upon Sati Prasad v Dy Director of Consolidation (1983 All LJ

33(1)(i)(supra) This case applied to the facts of the present case Here in the instant case also the bhumidhar has transferred the possession to respondents 4 and 5 as the petitioner s father has obtained loan twice and to secure payment of the same he has transferred the possession of the land to respondents 4 and 5 I am of the view that Ss 154 and 164 read together apply in different fields Where possession has been transferred by a bhumidhar for the purposes of securing any payment of money advanced, in that event the said transfer of possession would become a sale and in respect of such sale the provisions of S 154 shall apply inasmuch as the vendee as a consequence of the transfer of possession should not hold the land (in area) more than 12 50 acres.

13 No bhumidhar shall have right to mortgage any land belonging to him where possession of the mortgaged land is also transferred It obviously means that in case possession is transferred then it shall cease to remain mortgage rather it would become outright sale and in case possession is not transferred by a bhumidhar in that case it may remain a mortgage In other words a mortgage can be created by a bhumidhar but not by transfer of possession but otherwise To put in other language a simple mortgage of a bhumidhari land is allowed (where possession is not transferred) but if possession is also sought to be transferred, that is prohibited

14 In view of the discussions made above I am of the view that the possession was correctly transferred by the father of the petitioner in favour of respondents 4 and 5 and in view of the provisions of S 164 that became a sale The provisions of S 155 creates a bar against the bhumidhar who wants to transfer possession in favour of a mortgagee In other words a bhumidhar cannot transfer possession and thereby create a mortgage. But a bhumidhar can create a mortgage without transfer of possession

15 In view of the discussion made hereinbefore the writ petition lacks merit and is hereby dismissed. There shall, however be no order as to costs.

Petition dismissed.

1986 ALL. L. J. 391

I P SINGH AND R P SHUKLA JJ

Irfan. Petitioner v State of Uttar Pradesh and others. Respondents.

Habeas Corpus Writ Petn. No 2614 of 1985 D 23-5-1985

National Security Act (65 of 1980), S. 10 — Constitution of India, Art. 22(5) — Preventive detention under S. 3(2) — Representation of detenu not placed before Advisory Board — Mandatory provisions of S 10 violated — Detention order rendered invalid. (Para 4)

Dileep Kumar and Tarun Verma. for Petitioner

I. P SINGH, J — Irfan alias Gama petitioner (hereinafter referred to as the detenu) has filed this writ petition under Art. 226 of the Constitution of India to challenge the validity of the detention order dated 31 8-1984 passed by the District Magistrate Gorakhpur (hereinafter referred to as the detaining authority) under S 3(2) of the National Security Act (65 of 1980) (hereinafter referred to as the Act) with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order

2 We have heard the learned counsel from both sides and are of the opinion that this writ petition can be disposed of on a short point to be discussed presently For this reason, we are not entering into the detailed facts and other circumstances involved or pleaded in the petition.

3. Learned Counsel for the detenu has pointed out that his representation against the detention order was handed over to the Superintendent of Jail, Chhapra (Bihar) on 19-9 1984 The grievance is that this representation was never placed before the Advisory Board and the mandatory provisions of S 10 of the Act were violated rendering the detention order illegal.

4. The counter affidavits filed by the District Magistrate, Gorakhpur as well as filed on behalf of the State Government make it clear that the said representation was never placed before the Advisory Board We are,

therefore of the opinion that this was a clear violation of S 10 of the Act The detention order in question is rendered invalid. There is no justification for the continued detention of the detenu.

5 In the result, the writ petition succeeds and is allowed We direct the respondents not to detain Irfan alias Gama petitioner (detenu) any more in pursuance of the impugned detention order dt. 31 8-1984 passed by the District Magistrate Gorakhpur

6. It is made clear that the order which is passed by us today will not entitle the detenu to be released physically if he could be detained in pursuance of any other lawful order or is wanted otherwise in any other matter

Petition allowed

1986 ALL. L. J 392

= AIR 1986 Supreme Court 789

(From Allahabad)*

O CHINNAPPA REDDY AND
E S VENKATARAMIAH JJ

Civil Appeals Nos 261 with 262 of 1986 in Spl. Leave Petn. (Civil) Nos 10928 and 17155 of 1985 D/ 24-1 1986

Jalkishan Mallah Matseyajeevi Sahakari Samiti Ltd. Petitioner v State of Uttar Pradesh and others. Respondents

with

State of Uttar Pradesh and another Petitioner v Allahabad Balu Udyog and others. Respondents.

Mines and Minerals (Regulation and Development) Act (67 of 1957), Ss. 4 and 30 — Mining lease — Duration of — Rival bidders approaching Central Govt. in revision as per direction of Supreme Court — Meanwhile, State Govt. finding litigation to be prolonged, granting lease for one year to highest bidder as interim measure — Central Govt. by its order in revision directing that lease be granted to bidder who had taken lease in interim period, for three years instead of one year — Held, total period for which lease was to be granted was three years including period for which grantee worked the lease by way of interim arrangement and not three years from date of grant of lease by State Govt. pursuant to order of Central Govt. Civil Misc. Writ Petn. No 6876 of 1984, D/ 15-7 1985 (All) Reversed.

(Para 1)

Mr S N Kackar Sr Advocate and Mr Rajiv Datta, Advocate for Petitioner in C A. No 261 of 1986 Mr Anil Dev Singh, Sr Advocate and Mrs Shobha Dikshit Advocate, for Petitioners in C.A No 262 of 1986 and, for Respondents in C.A. No 261 of 1986 Mr R. K. Garg Sr Advocate Mr H M. Singh, Mr R. S Yadav Mr P P Yadav Mr V C Misra and Mr M K. Garg, Advocates for Respondents.

CHINNAPPA REDDY, J — The right to excavate sand from Zone No 1 of river Yamuna was auctioned by the Collector Allahabad on November 13 1981 The period for which the mining lease was to be granted was one year and in the alternative for three years Bidders were required to offer bids for grant of lease for both the periods in the alternative The 4th and 5th respondents offered a bid of Rs. 1 10 000/ per year and were the highest bidders The State Government did not accept the bid There was consequent litigation. The matter came to the Supreme Court and the court gave a direction that the respondents might approach the Central Government in revision The respondents went before the Central Government in revision Meanwhile, as the litigation appeared to be prolonged, by way of an interim arrangement, the State Government directed an auction to be held for a period of one year only This auction was held on March 8 1982. Once again the 5th respondent was the highest bidder with a bid of Rs 3 10 000/ He was granted a lease for one year The one year is stated to have expired on Sept. 30 1982 Apparently the sand-year (if such an expression may be used) expires on Sept. 30 every year On Jan 7 1983 the Central Government passed orders in the revision petition filed by the fifth respondent. The Central Government came to the conclusion that the State Government did not

*Civil Misc. Writ Petn. No 6876 of 1984 D/ 15-7 1985 (All)

appear to take a firm stand on the questions at issue The Central Government was of the view that there should be some finality attached to the terms and conditions as well as the duration of the lease The Central Government thought that in the particular case the revision petitioner who had in the interim period taken the lease for an amount of Rs. 3 10 000/ for one year should be allowed to work the lease for three years instead of one year provided he agreed to work the lease for Rs 3 10 000/ per year Pursuant to the order of the Central Government, the State Government by its order dated May 18 1983 granted the lease for a period of three years 1981 82, 1982 83 and 1983-84 that is, up to September 30 1984 This was questioned by respondents 4 and 5 by way of a writ petition in the High Court of Allahabad. They contended that the lease ought to have been for a period of three years from May 18 1983 the date of the grant of lease pursuant to the order of the Central Government. The High Court of Allahabad accepted the contentions of respondents 4 and 5 and allowed the writ petition. The present appeals have been filed by the State Government and by Jalkishan Mallah Matseyajeevi Sahakari Samiti, a co-operative society who claims to be anxious to engage itself in the work of mining sand and who sought to implead itself as a party in the High Court offering to take the mining lease for Rs. 7 lakhs per year Shri Kacker learned counsel for the Mallah Matseyajeevi Sahakari Samiti and Shri Arul Dev Singh, learned counsel for the State Government argued before us that the High Court was wrong in its interpretation of the order of the Central Government. All that the Central Government did was to direct the grant of lease for a period of three years instead of one year for which the petitioner had obtained an interim lease on the same terms as the respondents had obtained the interim lease for one year that is, at the rate of Rs. 3 10 000/ per year In other words, the total period for which the lease was to be granted to the respondent was three years including the period for which they worked the mining lease by way of an interim arrangement. The contention of Shri Kacker appears to be correct. In fact we find that that was the case of the respondents also when they approached the State Government to grant a lease pursuant to the order of the Central Government. The respondents in their letter dated April 21 1983 requesting the State Government to grant a lease pursuant to the order of the Central Government categorically stated that they should be granted a lease the term of which would expire on July 25 1985 We also find that in the lower court the respondents also gave an undertaking that they would not work the lease after May 17 1985 In the circumstances, we think that the High Court was not right in holding that the State Government was required to grant a lease for a period of three years from May 18 1983 the date of the grant of lease The parties themselves seem to have so understood the order in the beginning though they apparently changed their mind by the time they filed the writ petition. On the earlier interpretation placed by the parties themselves on the order of the Central Government, they were not entitled to work the mining lease after the expiry of the sand-year 1985 that is after 30th September 1985

2. The appeals are therefore allowed. The order of the High Court is set aside. It is declared that the lease in favour of the respondents expired on September 30 1985 There will be no order as to costs Orders regarding amounts deposited with the Government may be sought from the High Court.

Appeals allowed

1986 ALL. L. J. 393

= AIR 1986 Supreme Court 753

(From 1982 All LJ 1412)

S MURTAZA FAZAL ALI
A VARADARAJAN AND RANGANATH MISRA JJ

Civil Appeal No 10085 of 1983 D/ 8-5-1985

Smt Vijay Laxmi Gangal Appellant v Mahendra Pratap Garg, Respondent

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S. 20(4) — Eviction — Arrears of rent — Unconditional deposit on first hearing — Rent at rate stated in plaint with costs and interest deposited by tenant

on first hearing — Plea disputing the rate of rent however raised by tenant in written statement — Deposit does not become conditional thereby

The deposit made by the tenant of the amount on the first hearing date made up of rent at the rate as claimed in the plaint and interest and costs does not become not unconditional merely because the tenant had contended in the written statement that the agreed rent was not at the rate claimed in the plaint and he did not succeed in proving it at the trial. To construe S 20(4) otherwise would amount to foreclosure of any defence regarding the quantum of rent even in cases where the amount alleged by the landlord is more than the real rent agreed between parties 1982 All LJ 1412 Affirmed (Para 8)

The Rent Controller has a discretion in S 20(4) in lieu of passing a decree for eviction on the ground of failure to deposit the arrears, interest and costs within the period mentioned in S 20(4) to pass an order relieving the tenant against his liability for eviction on that ground. But it is not possible to lay down any broad and general proposition that the discretionary relief should be denied to the tenant in all cases where he fails to prove his case regarding the quantum of rent even though he had deposited the rent at the rate claimed by the landlord in the plaint together with interest and costs within the time as required by S 20(4) (Para 11)

Cases Referred	Chronological	Paras
AIR 1981 SC 1726	(1982) 1 SCR 331	1981 All LJ 1028
		9

Mr S N Kacker Sr Advocate and Mr R B Mehrotra, Advocate with him for Appellant Mr Aruneshwar Gupta and Mr B B Sharma, Advocates for Respondent.

VARADARAJAN, J. — The short point arising for consideration in this appeal by special leave filed against the decision of a Division Bench of the Allahabad High Court in Civil Revision No 332 of 1981 turns upon the interpretation of S 20(4) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972) (hereinafter referred to as the Act) The appellant landlady filed the suit on 6-8-1973 for recovering possession from the respondent tenant of a portion of premises situate at Bhau Ka Nagla, Agra Road, Mauza Dholpura on the allegation that it had been let to the respondent on a rent of Rs. 360/ per mensem and that the tenancy has come to an end by efflux of time fixed in the rent note on the expiry of 30-6-1973 She alleged in the plaint that the demised property is situate beyond the municipal limits of Ferozabad and is intended for use as a factory and is exempt from the provisions of the Act and that the respondent is in arrears of rent to the extent of Rs. 3 960/ for the period from 1 8 1972 to 30-6-1973 and she is entitled to recover possession of the premises together with arrears of rent of Rs 3 960/ at Rs 360/ per mensem for the said period and mesne profits of Rs. 720/ for the subsequent period from 1 7 1973 at Rs 20/ per day

2 The respondent opposed the suit contending that the property is situate within three kilometres of Ferozabad municipal limits and was not a factory when it was let out and that it is governed by the provisions of the Act He denied that the rent is Rs 360/ per mensem and contended that it is only Rs 125/ per mensem and that the tenancy includes a vacant land shaded green and yellow in the plan filed with the plaint which according to the plaint does not form part of the lease He denied that he had executed the rent note mentioned in the plaint and that the vacant land shaded green and yellow in the plaint plan had not been leased to him. He further denied that the tenancy has come to an end by efflux of time and contended that the amounts claimed as arrears of rent and mesne profits are wrong and excessive and that the notice to quit is invalid in law as it excludes the vacant land shaded green and yellow in the plaint plan which also is the subject matter of the lease Finally he contended that the suit is barred by the provisions of S 20 of the Act sub-sec (1) whereof says that save as provided in sub-sec (2) no suit shall be instituted for the eviction of a tenant from a building notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner

3 The learned Fourth Additional District Judge Agra who tried the suit exercising his jurisdiction as a Judge of Small Causes Court found on 19-7 1975 that he had jurisdiction while recording findings on the point of

jurisdiction tried as preliminary issue and he held that though admittedly even the vacant land marked green and yellow in the plaint plan had been originally leased up to 27 7 1972 thereafter only the red marked portion had been leased on a rent of Rs. 360/ per mensem under the rent note (paper No 18A) the execution whereof has been denied by the respondent, excluding the green and yellow marked portion On the basis of that unregistered rent note (paper No 18A) he found that the rent is Rs 360/ per mensem, rejecting the respondent s case that the old rent of Rs 125/ per mensem continued even after the dissolution of the partnership to which the premises had been leased earlier

4 The respondent admitted that though the property is situate outside the Ferozabad municipal limits it is situate within three kilometres from those limits and is therefore governed by the provisions of the Act while the appellant denied that it is situate within three kilometres The learned District Judge found on the evidence that the property is situate within two kilometres of the municipal limits and falls within the exception and is governed by the provisions of the Act. He found that the tenancy for the period of 11 months under the rent note (paper No 18A) had come to an end by efflux of time and the parties are governed by it and that the suit is, however governed by the provisions of S 20 of the Act

5 However the learned District Judge considered the question whether the respondent is liable for eviction in this suit and found that the appellant had served notice of demand (paper No 35C) on the respondent and he failed to pay the rent claimed by the appellant and he is as such liable to be evicted under S 20 of the Act. But the respondent had deposited the full amount of rent as claimed at Rs. 360/ per mensem together with damages for use and occupation, interest and costs as required by S 20(4) of the Act on 31 10-1973 a day after the first hearing date 30-10-1973 The learned District Judge found that the sum of Rs 7 490/ was tendered in Court on 30-10-1973 and passed by the Court on that day and deposited into the bank on 31 10-1973 and that the tender made on 30-10-1973 was valid and the payment must be deemed to have been made on 30-10-1973 itself. But he accepted the argument advanced on behalf of the appellant that because the respondent had contended in the written statement that the rent is Rs. 125/ per mensem and it was rejected by the Court and it was found that the rent is Rs. 360 per mensem the deposit of Rs 7 490/ towards arrears of rent calculated at Rs 360/ per mensem together with interest and costs was not unconditional and therefore invalid and S 20(4) of the Act does not help the respondent. In that view the learned District Judge decreed the suit for eviction with arrears of rent and mesne profits at Rs. 360/ per mensem from 1 8-1972 and ordered credit being given for the amount deposited by the respondent towards the amount payable under the decree and granted four months time for the respondent to vacate the premises

6. In C R.P No 332 of 1981 filed by the respondent against the judgment of the trial Court a Division Bench of the High Court noticed that one of the conditions of S 20(4) of the Act is that the tenant should unconditionally pay or deposit the entire amount due together with interest and costs and that S 20(6) says that any amount deposited under S 20(4) shall be paid to the landlord without prejudice to the pleadings of the parties and subject to the ultimate decision in the suit. and they have observed that the submission made before them on behalf of the appellant that the deposit to be unconditional must be on acknowledgment of the liability for rent as claimed by the landlord if accepted would render the provisions in S 20(6) of the Act nugatory They have observed that if the tenant makes a deposit with a condition that it shall not be paid to the landlord until the suit is decided it would be a conditional deposit. They have found that in the present case the deposit was not conditional merely because while depositing the amount inclusive of rent at the rate of Rs. 360/ per mensem as claimed in the plaint the respondent had contended in the written statement that the rent is Rs 125/ per mensem and not Rs. 360/ per mensem and that pleading in the written statement that the rent is Rs. 125/ per mensem and not Rs. 360/ per mensem does not make the deposit conditional. In that view the learned Judges allowed the civil revision petition and dismissed the suit with costs in both the courts.

7 The findings dated 19-7 1975 recorded

by the learned District Judge on the preliminary issue holding that he had jurisdiction to entertain the suit is not available in the records produced in this Court. Therefore it is not known for what reason the learned District Judge held that he had jurisdiction to entertain the suit. The appellant came forward with the suit for recovering possession of the premises together with arrears of rent and mesne profits on the allegation that the tenancy under the rent note (paper No 18A) was for a period of only 11 months and that it had come to an end by efflux of time and the premises was intended for use as a factory and the Act is not applicable thereto On the other hand the respondent s defence was that the property was situate within three kilometres of Ferozabad municipal limits and is governed by the provisions of the Act and that the civil suit for recovery of possession of the property is not maintainable The learned District Judge accepted the respondent s contention on the question of applicability of the provisions of the Act to the premises in question on the ground that it is located within two kilometres of Ferozabad municipal limits S 20(1) of the Act lays down that save as provided in sub-sec (2) no suit shall be instituted for eviction of a tenant from a building notwithstanding the determination of his tenancy by efflux of time or on the expiry of a notice to quit or in any other manner The present suit is not based on any of the grounds mentioned in S 20(2) of the Act and though the respondent is alleged to have been in arrears of rent to the extent of Rs 3 960/ there is no allegation in the plaint that he is in arrears of rent for not less than four months and had failed to pay the same to the appellant within one month from the date of service upon him of a notice of demand, which is the ground mentioned in Cl (a) of S 20(2) of the Act In these circumstances, the learned District Judge should have normally dismissed the suit for want of jurisdiction in view of S 20(1) of the Act on his finding that the Act is applicable to the premises. It is not known why he did not do so but on the other hand proceeded to hold that the deposit by the respondent is not unconditional as required by S 20(4) of the Act and ordered his eviction on that basis.

8. We entirely agree with the learned Judges of the High Court that the deposit of the amount on the first hearing date made up of rent at the rate of Rs. 360/ per mensem as claimed in the plaint and interest and costs could not be said to be not unconditional merely because the respondent had contended in the written statement that the rent was only Rs 125/ per mensem and he did not succeed in proving it at the trial It is not possible to construe S 20(4) in the manner done by the learned District Judge as that would amount to foreclosure of any defence regarding the quantum of rent even in cases where the amount alleged by the landlord is more than the real rent agreed between the parties.

9 In this connection Mr Kacker learned counsel appearing for the appellant relied strongly upon the following observation made by Balakrishna Eradi J speaking for himself and Pathak and Venkataramiah JJ in Mangal Sen v Kanchhu Mal, (1982) 1 SCR 331 at p 336 (AIR 1981 SC 1726 at p 1728)

The provisions of sub sec (4) will be attracted only if the tenant has, at the first hearing of the suit unconditionally paid or tendered to the landlord the entire amount of rent and damages for use and occupation of the building due from him together with interest thereon at the rate of nine per cent per annum and the landlord s costs of the suit in respect thereof, after deducting therefrom any amount already deposited by him under sub-sec (1) of Sec 30 There is absolutely no material available on the record to show that the alleged deposit of Rs 1 980/ was made by the tenant on the first date of hearing itself and, what is more important, that the said deposit was made by way of an unconditional tender for payment to the landlord The deposit in question is said to have been made by the appellant on January 25 1974 It was only subsequent thereto that the appellant filed his written statement in the suit It is noteworthy that one of the principal contentions raised by the appellant defendant in the written statement was that since he had stood surety for the landlord for arrears of sales tax, there was no default by him in the payment of rent In the face of the said plea taken in the written statement, disputing the existence of any arrears of rent and denying that there had been a default it is clear that the deposit even if it was made on the date of the first hearing was not an unconditional tender of the amount for payment to the landlord. Further there is also nothing on record to show that what was deposited was the correct

amount calculated in accordance with the provisions of Sec 20(4) In these circumstances, we hold that the appellants has failed to establish that he has complied with the conditions specified in sub-sec (4) of Sec. 20 and hence he is not entitled to be relieved against his liability for eviction on the ground set out in clause (a) of sub-section (2) of the said section

10. The above principle cannot apply to the facts of the present case for in that case it was not clear whether the deposit of the correct amount was made within the time fixed in S 20(4) of the Act whereas in the present case it has been found by the learned District Judge that the arrears of rent at the rate claimed in the plaint together with interest and costs had been deposited within the time mentioned in S 20(4) of the Act

11 Mr Kacker next drew our attention to the language used in S 20(4) and S 39 of the Act and submitted that whereas the provisions of S 39 are mandatory the Rent Controller has a discretion in S 20(4) in lieu of passing a decree for eviction on the ground of failure to deposit the arrears interest and costs within the period mentioned in S 20(4) to pass an order relieving the tenant against his liability for eviction on that ground and that the High Court exercising revisional jurisdiction under S 115 C P C should not have interfered with the discretion exercised by the learned District Judge in ordering eviction and set aside that order especially in view of the fact that the respondent had failed to prove that the rent was only Rs 125/ per mensem and not Rs. 360/ per mensem We do not agree The Act is a social piece of legislation which leans in favour of tenants. Merely because the tenant had failed to prove his case that the rent was only Rs. 125/ per mensem and not Rs. 360/ per mensem, the discretionary relief could not be denied to him even though he had deposited the arrears of rent at the rate claimed by the landlord in the plaint together with interest and costs within the time mentioned in S 20(4) of the Act It is not possible to lay down any broad and general proposition that the discretionary relief should be denied to the tenant in all cases where he fails to prove his case regarding the quantum of rent even though he had deposited the rent at the rate claimed by the landlord in the plaint together with interest and costs within the time as required by S 20(4) of the Act

12. For the reasons mentioned above we are of the opinion that no interference with the decision of the High Court is called for in this case The appeal fails and is dismissed with costs.

Appeal dismissed

1986 ALL. L. J. 397

= AIR 1986 Supreme Court 356

(From Allahabad)*

O CHINNAPPA REDDY AND
V KHALID JJ

Criminal Appeal No 816 of 1985 D/ 28-11 1985

Raghavendra Singh, Appellant v Superintendent, District Jail, Kanpur and others, Respondents.

(A) National Security Act (65 of 1980), Ss 3, 14 — Detention order — Representation for its revocation/cancellation under S. 14 made to Central Govt. — Unduly long delay of 75 days in disposal of representation by Central Govt. — Further detention of detenu becomes illegal W P No 1518 of 1985, D/ 21 8-1985 (All.) Reversed. (Constitution of India, Art. 22(5).) (Para 3)

(B) National Security Act (65 of 1980), S. 14 — Representation to Central Govt. — To whom to be addressed — (General Clauses Act (10 of 1897), S. 3(8).)

Under S 3(8) of the General Clauses Act, the Central Government means the President and a representation addressed to the President must therefore be considered to be a representation properly addressed to the Central Government (Para 3)

Cases Referred	Chronological	Paras
AIR 1984 SC 1095	1984 Cri LJ 922	3
AIR 1981 SC 1077	1981 Cri LJ 606	3
AIR 1981 SC 2230	1981 Cri LJ 1867	3
(1980) 3 SCR 738	(1980) 3 SCC 295	3

*W P No 1518 of 1985 D/ 21-8-1985 (All.)

LC/LC/G773/85/VVG

Mr S N Kacker Sr Advocate and Mr R B Mehrotra Advocate with him for Appellant Mr B Datta Addl Solicitor General, Mr M S Gujral Sr Advocate Mr Gopal Subramanium, Mr Dalveer Bhandari, Mr C V Subba Rao Miss Sushma Rehlan and Mr R N Poddar Advocates with them, for Respondents.

CHINNAPPA REDDY, J — Special Leave granted.

2. The appellant, Raghavendra Singh alias Chhotey Raja is detained under the provisions of the National Security Act 1980 The order of detention was passed on January 20 1985 by the District Magistrate Kanpur Dehat and the appellant was arrested on January 22, 1985 when the order of detention as well as the grounds of detention were served on him. The Government of Uttar Pradesh approved the order of detention on January 30 1985 and reported the matter to the Central Government on January 31 1985 under S 3(5) of the National Security Act A representation under S 8 of the Act was made by the appellant on February 10 1985 and it was rejected on February 13 1985 On March 1 1985 the Advisory Board s opinion was received by the State Government and on March 16 1985 the State Government determined that the period of detention of the appellant should be one year On March 14 1985 the appellant made four representations to the President of the Union of India, the Prime Minister the Governor of Uttar Pradesh and the Chief Minister of Uttar Pradesh. Each of the representations was styled as Representation for revocation/cancellation of detention order The prayer in each of the representations specially invoked S 14 of the National Security Act which enables (i) the State Government to revoke an order of detention made by an officer specified by the State Government under S 3(3) of the Act and (ii) the Central Government to revoke any order of detention whether made by the Central Government, State Government or an officer specified by the State Government The representation addressed to the President was received by the President s Secretariat on March 18 1985 while the representation addressed to the Prime Minister was received by the Prime Minister s Secretariat on March 19 1985 It was on May 31 1985 that the Central Government rejected his representation.

3 The main complaint of the petitioner in the High Court where he filed the writ petition out of which the present appeal arises on April 4 1985 and before us in the appeal is that there was an enormous delay (76 days) in the disposal of his representation by the Central Government and for that reason alone his further detention was illegal and he was entitled to be set at liberty The delay in the disposal of the representation by the Central Government is indeed not disputed but what is claimed is that the representations though received in the President s Secretariat and the Prime Minister s Secretariat on 18th and 19th March 1985 respectively were actually received in the Ministry of Home Affairs on May 25 1985 and dealt with on May 31 1985 It is stated that there was thus no delay at all in the Ministry of Home Affairs The learned Additional Solicitor General, who appeared for the Central Government was unable to explain to us the cause for the delay in the President s and Prime Minister s Secretariats, but urged that under the Rules of Business, it was the Ministry of Home Affairs that was concerned with orders of detention under the National Security Act and as there was no delay in the disposal of the representations by the Ministry of Home Affairs and (sic) the appellant could not complain of any delay in the consideration of his representation The learned Additional Solicitor General also urged that the representation to the Central Government should have been addressed to the Ministry of Home Affairs and not to the President or the Prime Minister According to him the President and the Prime Minister receive thousands of memorials and representations from every part of the country regarding a multitude of affairs and the representations could not be expected to be considered as expeditiously as they would be considered had they been addressed to the appropriate Ministry The explanation given by the learned Additional Solicitor General may justify part of the delay but it certainly cannot justify the enormous amount of delay in this case Under S 3(8) of the General Clauses Act the Central Government means the President and a representation addressed to the President must, therefore, be considered to be a representation properly addressed to the Central Government Even so some allowance may be made for the time taken to

forward the representation to the appropriate Ministry Due allowance being made for the time which may ordinarily be taken for forwarding the representation from the President's Secretariat to the concerned Ministry we are unable to say in the present case that there has been adequate explanation for the delay In fact no one has filed any affidavit to explain the cause for the delay in the President's and the Prime Minister's Secretariats All that we know from the record before us is that the representations were received in the President's and the Prime Minister's Secretariats on 18th and 19th March, 1985 and thereafter after about two months and one week the representations were received in the Ministry of Home Affairs We have no information as to how these representations were dealt with in the President's and the Prime Minister's Secretariats The learned Additional Solicitor General found himself at a loss to explain the delay and justify the detention In view of the wholly unexplained and unduly long delay in the disposal of the representations by the Central Government, the further detention of the appellant must be held illegal and he must be set at liberty in the light of the judgments of this Court in Sabir Ahmed v Union of India (1980) 3 SCR 738 Khatoon Begum v Union of India, AIR 1981 SC 1077 and Sat Pal v State of Punjab AIR 1981 SC 2230 The nature of the power of revocation conferred by statute on the Central Government under S 11 of the COFEPOSA Act which in terms is similar to S 14 of the National Security Act was explained by this Court in Sat Pal v State of Punjab (supra) in the following words

The making of an application for revocation to the Central Government under S 11 of the Act is therefore part of the constitutional right a citizen has against his detention under a law relating to preventive detention While Article 22(5) contemplates the making of a representation against the order of detention to the detaining authority which has to be referred by the appropriate Government to the Advisory Board constituted under S 8(a) of the Act, Parliament has, in its wisdom enacted S 11 and conferred an additional safeguard against arbitrary executive action"

We must also add that this is not a case of repeated representations to the Central Government as was the case in State of U P v Zavad Zama Khan AIR 1984 SC 1095 In that case it was held that where an earlier representation to the Central Government had been properly disposed of the fact that the second representation to the Central Government was not so disposed of would not entitle the detenu to be released The appeal is therefore allowed and the appellant is directed to be set at liberty forthwith.

Appeal allowed

1986 ALL. L J 399

B L YADAV J

Om Prakash and another Petitioners v Deputy Director of Consolidation Meerut and others Respondents

Civil Misc Writ Petn No 4109 of 1975 D 8 11 1985

(A) Civil P C (1908), S 11 O 1, R. 8 — Res judicata — Earlier suit by residents in representative capacity for restraining parties in possession of pasture land from interfering with their right to use land as pasture — Issues as to jurisdiction of Court and non-joinder of parties, i.e., Gaon Sabha and State, decided in favour of plaintiffs — Suit and appeal therefrom dismissed — Defendants held Sirdars of land — Decision is binding on Gaon Sabha.

Where in an earlier representative suit by certain residents of a village for relief of permanent injunction restraining defendants from interfering with the user of the suit land as pasture land by the plaintiff and other residents of the village and in suit the plaintiffs alleged and proved that the Civil Court had jurisdiction to entertain the suit and that suit was not barred by non joinder of necessary parties, i e State Government and the Gaon Sabha and the findings were recorded in their favour and the suit and the appeal preferred was dismissed by declaring defendants as sirdars, the judgment and decree in the earlier suit was binding on the Gaon Sabha even though the State and the Gaon Sabha might

---

BD/CD/A461/86/SNV

not have been made parties in the suit inasmuch as the interest of the Gaon Sabha and the State was represented by the plaintiffs in the earlier suit and all the evidence was led that could have been led by the Gaon Sabha or the State Accordingly the Gaon Sabha being bound by the earlier judgment and decree could not challenge the claim and rights of the defendants in the earlier suit on the commencement of the consolidation proceedings in the objection filed by them for entering their names as sirdars of the land in question (Para 17)

(B) Civil P C (1908), O 39, Rr 1 and 2 and O 1, R 10 — Representative suit for permanent injunction against interference with user of certain pasture land by residents of village — No relief claimed against Gaon Sabha and State Govt. — Also, no relief claimed against entries in revenue paper — Gaon Sabha and State Govt. are not necessary parties — In suit for permanent injunction only those persons who are interfering with possession are necessary parties (Para 8)

(C) U P Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 3(14) and 308 — Term land — Scope of — Pasture land is not covered by it — Correlative inference is that revenue Court is not the forum in respect of such land. (Civil P C (1908), S 9) (Para 16)

(D) Interpretation of Statutes — Deficiencies in statute — Court cannot add or amend or by construction make good those deficiencies.

A Court has to interpret the words of legislature as they stand and even though there appears to be some intercellular space in the language used in an Act, Court cannot add or amend or by construction cannot make good the deficiencies which are left there (Para 15)

Cases Referred	Chronological	Paras
1970 All LJ 505		8
1969 Rev Dec 33	1968 All WR (HC) 500	10
1952 AC 401	(1952) 1 All ER 531	IRC v Dowdall O Mahoney & Co 14
1950 AC 235	(1949) 2 All ER 755	65 TLR 633 Commonwealth of Australia v Bank of New South Wales 14
AIR 1926-All 664		10
AIR 1915 All 463		10

R R Shivhare and J N Chandra for Petitioners Mr Rathore and Standing Counsel, for Respondents

ORDER — The present petition under Art 226 of the Constitution is directed against the orders passed by the Deputy Director of Consolidation Meerut Assistant Settlement Officer (Consolidation) Meerut and the Consolidation Officer Meerut dated 15-3-1975 23 12 1972 and 11 9-1972 respectively in proceedings pertaining to the title under S 9 A(2) of the U P Consolidation of Land Holdings Act 1953

2 Short of details the facts are these In the basic year plots Nos 34/3-18-0 132/1 13-0 133/2 8-0 134/16-6-0 and 172/2-0-0 in Khata No 203 were recorded in the name of the petitioners under Clause 4 of the Khatauni An objection was filed by the petitioners alleging that both of them being members of the joint Hindu family were in possession over the land in dispute for the last more than 25 years and they have acquired Sirdari rights and now Bhumidhari rights Earlier a regular Civil Suit No 1594 of 1966 was filed by Ch Goverdhan Singh and 5 others as plaintiffs against the petitioners in the representative capacity for the relief of a permanent injunction restraining defendants 1 and 2 (the present petitioners) from taking exclusive possession over the land in suit and also restraining them from interfering with the user of the land as pasture land used by the plaintiffs and other residents of the village The said suit was contested by the petitioners alleging that they have acquired Sirdari rights and that the suit was not maintainable The plea of jurisdiction was also raised as also the plea of non joinder of parties and issue No 4 was whether the Civil Court has jurisdiction to try the case The suit was dismissed by the judgment and decree dated 3 12-68 and in that suit petitioners were held to be sirdars. The appeal filed on behalf of the plaintiff was also dismissed on 26-3-69 and that judgment and decree became final and would operate as res judicata against the claim of the Gaon Sabha as the earlier suit was filed in representative capacity purporting to be under O 1 R 8 C P C and it was on behalf of all the residents of the village and the allegations in

the plaint contained the case that could have been set up by the Gaon Sabha. That suit was fought out till the first appellate Court. Hence the Gaon Sabha respondent 4 was bound by that judgment and decree. It was prayed that the names of the petitioners may be recorded as sirdar bhumidhar and the entries in the basic year under Clause 4 were incorrect and may be expunged.

3. The Gaon Sabha contested the case of the petitioner and alleged that the earlier suit would not operate as res judicata as the definition of land as given under S. 3(14) of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) did include the pasture land and the earlier suit was not maintainable in the Civil Court. The Gaon Sabha and the State Government were not made parties to that suit. Hence that suit being not maintainable in the Civil Court, the judgment and decree rendered therein would not operate as res judicata nor were binding against the interest of the Gaon Sabha and in respect of the land in dispute the petitioners cannot acquire sirdari rights and their objection was liable to be dismissed.

4. The consolidation authorities rejected the claim of the petitioners and held that the judgment and decree passed by the Munsif and the learned Civil Judge would not operate as res judicata nor they were binding as the Civil Court has no jurisdiction to entertain the suit and that land has vested in the Gaon Sabha.

5. It has been urged by Sri P. R. Shivhare, learned counsel for the petitioners that the judgment and decree dated 3-12-68 passed by the Munsif, Ghaziabad in Civil Suit No. 1594 of 1966 has been confirmed in appeal by the judgment and decree dated 26-3-69 passed by the Civil Judge and hence that would operate as res judicata or in any case as a constructive res judicata. All that could have been stated by the Gaon Sabha was alleged by the plaintiff in that suit and it was held by the Civil Judge and Munsif that the Civil Court has jurisdiction and at that time the plaintiff of that suit alleged and proved that the Civil Court has jurisdiction to try the suit, hence they cannot resile from that stand taken in the suit and the appeal. It was also held that the State Government and the Gaon Sabha were not made parties and as the definition of land under S. 3(14) of the Act did not cover pasture land, hence the suit would be maintainable only in the Civil Court and the Gaon Sabha was bound by the earlier judgment and decree.

6. Sri A. Rathore, learned counsel appearing for the contesting respondents refuted the arguments advanced on behalf of the petitioners and urged that the earlier judgment would not operate as res judicata, that the Civil Court has no jurisdiction to try the suit and the definition of land under S. 3(14) of the Act did cover pasture land, that the petitioners did not acquire sirdari and bhumidhari rights and their objection was correctly dismissed.

7. I have heard the learned counsel for the parties. The main points for determination in the instant case are (1) whether the earlier judgment and decree dated 3-12-68 passed in Suit No. 1594 of 1966 (Ch. Goverdhan Singh v. Shakti Singh & others) as confirmed in appeal by the judgment and decree dated 26-3-69 filed in the Civil Court in respect of which allegations were made by the plaintiffs that it was a pasture land and the relief was for a permanent injunction, would operate as res judicata or constructive res judicata or whether respondent 4 was bound by that judgment and decree and (2) whether the pasture land was covered by the definition of land as given under S. 3(14) of the Act.

8. As regards the first point, I am of the opinion that the earlier judgment and decree of the Civil Court would certainly operate as res judicata or in any case as a constructive res judicata. The earlier suit was filed for a relief of permanent injunction in respect of the pasture land and it was a representative suit filed under O. 1 R. 8 C.P.C. As no relief against the State Government and the Gaon Sabha was claimed, hence the State Government and the Gaon Sabha were not made parties. No relief against the revenue paper entries were claimed by the plaintiffs in that suit, hence the Gaon Sabha and the State Government were correctly not made parties. In a suit for permanent injunction only those persons are the necessary parties who are interfering with the possession of the plaintiff. It is a settled view of this Court that in case the plaintiffs do not seek any relief against the State Government or the Gaon Sabha nor

they claim any relief in respect of the entries in revenue papers, the plaintiffs are not obliged to implead the State Government and the Gaon Sabha and such suit was cognizable by the Civil Court only (See Purshottam v Narottam, 1970 All LJ 505)

9 In the instant case the plea about the jurisdiction of the Civil Court was also raised and issue No 4 was framed about the plea of jurisdiction and it was held that the Civil Court has jurisdiction to try the case Further another plea about the non joinder of necessary parties was also raised and issue No 3 was framed on that point and it was held by the Civil Court that the suit was not barred by the non-joinder of the necessary parties. A certified copy of the judgment has been filed as Annexure-D to the petition, which I have perused. As in the earlier suit the residents of village has filed the suit and they had led evidence fought out the case diligently and had preferred appeal also which they lost, hence it cannot be said that the earlier suit was of collusive nature and further it is well settled that a party cannot be permitted to take inconsistent position in the Court, to blow right and loose to blow hot and cold as regards the plea of jurisdiction This doctrine applies not only to the successive stages of the same suit but also to another suit

10 In the instant case in the earlier suit the plaintiffs alleged and proved that the Civil Court has jurisdiction to entertain the suit and that suit was not barred by non joinder of necessary parties, i.e State Government and the Gaon Sabha and the findings were recorded in their favour in the earlier suit. The plaintiffs preferred appeal also and that also met the same fate Hence those findings regarding the Civil Court having jurisdiction to entertain the suit and that that suit was not barred by non joinder of necessary parties (State Government and the Gaon Sabha) became final and now the plaintiffs or the Gaon Sabha cannot be permitted to take contradictory plea that what was taken in the earlier suit. (See Hari Narain v Ram Raj 1969 Rev Dec 33 Abdul Qayum v Fida Hussain, AIR 1915 All 463 Kartar Singh v Nanda, AIR 1926 All 664 It is thus crystal clear that the earlier suit in respect of the land in dispute was maintainable in the Civil Court and as the similar plea has been raised in the present case by the Gaon Sabha and the earlier suit was fought out on merits, the appeal was also filed. Hence that judgment and decree in that suit would operate as res judicata, or in any case as constructive res judicata and respondent 4 cannot be permitted to wriggle out of that position

11 The next question that falls for determination is as to whether the definition of land as given under S 3(14) of the Act would cover pasture land or not, which was alleged to be the nature of land in respect of which the earlier suit was filed. It is better to set out statutory provisions of S 3(14) of the Act, which is as under —

3(14) Land except in Ss 109 143 and 144 and Chap VII means land held or occupied for purposes connected with agriculture horticulture or animal husbandry which includes pisciculture and poultry farming

It is thus clear that in the aforesaid definition the pasture land has not been included, whereas in the definition of land in the earlier Acts, i.e U P Tenancy Act, 1939 the definition of land read as follows

Section 3(10) — Land means land which is let or held for growing of crops or as grove land, or for pasturage It includes land covered by water used for the purpose of growing Singhra or other produce but does not include land for the time being occupied by a building or appurtenant thereto other than buildings which are improvements

12 By comparing the aforesaid definitions of land as contained under S 3(10) of the U P Tenancy Act, and that under S 3(14) of the Act there appears to be a noticeable change. The pasturage appears to have been deliberately omitted from the definition of land under S 3(14) of the Act.

13 There is a Latin maxim Absoluta sententia expositore non indiget which obviously means that when you have plain words of statute capable of only one interpretation no explanation of that is required There is yet another maxim "A verbis legis non estrect dendum which means that you must not vary the words of a statute

14 Craies on Statute Law VIIth Edition, page 66 observed as follows

The intention of the legislature is not to be

speculated on. in a Court of law or equity what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication." (See Commonwealth of Australia v. Bank of New South Wales, 1950 AC 235 (PC) v. Dowdall O'Mahoney & Co. 1952 AC 401)

15. I am of the view that it cannot be assumed that the pasture land might have been omitted inadvertently from being mentioned clearly in the definition under S. 3(14) of the Act, but in that event also it is not the duty of the Court to create or supply the causus omissus which means that the words of a statute need not be extended to meet a case for which provision has clearly and undoubtedly not been made. A Court has to interpret the words of legislature as they stand and even though there appears to be some intercellular space in the language used in an Act, we cannot add or amend or by construction we cannot make good the deficiencies which are left there.

16. In the instant case the pasturage or pasture land which was included in the definition under S. 3(10) of the U. P. Tenancy Act, was deliberately omitted by the legislature under S. 3(14) of the Act. This cannot be unintentional. This should not go unnoticed. The only irresistible inference is that if it was a 'pasture land' in that case that would not be covered by the definition of land under the Act. I am of the view that the other correlative inference is that the Revenue Court is not the forum for suit in respect of pasture land, and the Civil Court was the only forum.

17. As the earlier suit was maintainable in the Civil Court in respect of the land in dispute and that judgment and decree became final and that was a suit fought out on merit, hence respondent 4 was bound by the judgment and decree in the earlier suits. The earlier suit was also filed by the plaintiff, who were the residents of the village and that was a representative suit and all the allegations were made in the suit which could have been made by the Gaon Sabha. The Gaon Sabha was also a body for the benefit of the entire residents of the village and the same duty was performed by the plaintiffs by filing a suit to restrain the present petitioners, who were defendants there from taking exclusive possession over the land in suit and thereby interfering with the usage of the land as pasture land used by the plaintiffs and other residents of the village. I am accordingly of the view that the judgment and decree in the earlier suit was binding on respondent 4 even though the State and the Gaon Sabha might not have been made parties in the earlier suit, inasmuch as the interest of the Gaon Sabha and the State was represented by the plaintiffs there and all the evidence were led that could have been led by the Gaon Sabha or the State. Hence there appears to be no way out than to accept the finality of the earlier judgment and decree rendered by the Civil Court. Respondent 4 the Gaon Sabha being bound by the earlier judgment and decree, cannot challenge the petitioner's claim and rights on the commencement of the consolidation proceedings. In spite of the judgment and decree in the earlier suit, the names of the petitioners could not be entered in the main tenants column as sirdar/bhumidhar and hence for that limited purpose the petitioners filed objection under S. 9-A(2) of the U. P. Consolidation of Holdings Act and that should have been allowed by the consolidation authorities.

18. In view of the discussions made hereinbefore, the consolidation authorities have committed an error apparent on the face of the record.

19. In the result, the petition succeeds and is allowed with costs. The orders dated 15-3-1975, 23-12-72 and 11-9-72 are hereby quashed. As a necessary corollary the petitioners shall be entered in the revenue papers sirdars/bhumidhars over the plots in dispute and they would be assessed to land revenue according to law.

Petition allowed.

1986 ALL. L. J 404

H N SETH, Actg C J AND J N DUBEY J

Chhotey Lal, Petitioner v State Electricity Board, U P Lucknow and others, Respondents

C M. Writ Petn. No 3724 of 1976 D/ 7 1 1986

(A) U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 281 — Recovery of electricity dues as arrears of land revenue — Agreement between consumer and Electricity Board providing for industrial electricity supply — Interpretation (U P Government Electricity Undertaking (Dues Recovery) Act (16 of 1958), S 5)

Where the agreement between the consumer and the Electricity Board provided that the industrial electricity supply would be provided to the consumer for a guaranteed period of five years and thereafter on yearly basis till the termination of the agreement by the consumer by means of written notice provided if taking of the supply was stopped during the course of the year he had to pay minimum charges for that entire year the consumer could not resist the recovery of electricity charges as arrears of land revenue on the ground that during the course of the year after guaranteed period was over no electricity was supplied and that he had written to the Executive Engineer of the Board for disconnecting his connection permanently

(Para 6)

(B) U P Government Electricity Undertaking (Dues Recovery) Act (16 of 1958), Ss 3, 5 — Notice sent to consumer per registered post — Consumer cannot claim that recovery certificate under S 5 was issued against him without sending notice of demand under S 3 (U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 281)

(Para 7)

(C) U P Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 279, 286 — Modes of recovery of arrears of Land revenue under S. 279 — Are available for recovery of sums which are recoverable as arrears of land revenue

Ss 279 to 285 and the rules framed thereunder make no distinction between land revenue and sums of money recoverable as arrears of land revenue It is only in S 286 that a distinction has been drawn The distinction between the two sub-clauses of S 286 is that while under sub-sec (1) which deals with the recovery of arrears of land revenue the dues can be realised by attachment and sale of the immovable property of the defaulter only if the same cannot be recovered by any of the processes mentioned in Cls (a) to (e) of sub-sec (1) of S 279 there is no such restriction under sub-sec (2) which deals with the recovery of sums of money recoverable as arrears of land revenue which means that for recovery of such dues recourse could be taken to the mode provided in Cl. (f) of sub-sec (1) of S 279 irrespective of the fact that the same could be recovered by other processes mentioned in Cls (a) to (e) of sub-sec (1) of that section Hence it cannot be said that the modes prescribed under S 279 are not available for recovering the sums of money recoverable as arrears of land revenue and that such sums of money can be recovered only by the mode provided under sub-sec (2) of S 286 The arrears of land revenue and the sums of money recoverable as arrears of land revenue are kept at par under S 279 and other cognate provisions of Chapter X of the Act except S 286 which deals with the mode prescribed under cl (f) of sub-sec (1) of S 279 Only because some distinction is made between the land revenue and sums of money recoverable as arrears of land revenue under S 286 it cannot be said that the other modes contained in S 279 are not available for recovery of the sums which though not land revenue are recoverable as arrears of land revenue

(Para 10)

(D) U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 279(1)(b) — U P Zamindari Abolition and Land Reforms Rules (1952), R 25 — Modes for recovery of arrears of Land Revenue — Recourse to the mode can be taken only if person possesses sufficient means to discharge liability and not otherwise. AIR 1984 SC 1213 Foll (Para 11)

Cases Referred	Chronological	Paras
AIR 1984 SC 1213	1983 Tax LR 3008	11

C B Shukla for Petitioner Standing Counsel for Respondents

J N DUBEY, J — By means of this writ petition petitioner Chhotey Lal has challenged the validity of recovery proceedings initiated against him for recovery of electricity dues as arrears of land revenue under S 2(9)(b) read with S 281 of the U P Z A and L R Act of 1950 and rules framed thereunder (hereinafter referred to as the Act and Rules)

2 The opposite party No 1 U P State Electricity Board entered into an agreement with the petitioner Chhotey Lal on 29th November 1966 under which it was to provide an industrial connection to him for running his flour and rice mill etc for a guaranteed period of five years It installed the necessary connection in the premises of the petitioner and started supplying the electricity to him with effect from 27th January 1967 In August 1976 opposite parties sought to recover some electricity dues from the petitioner as arrears of land revenue. Feeling aggrieved the petitioner has approached this Court for relief under Art 226 of the Constitution.

3 We have heard learned counsel for the parties and have perused the record.

4 Learned counsel for the petitioner contended that the electricity connection of the petitioner was disconnected in June 1973 and thereafter no electricity was supplied to him Later on he transferred his mill and requested the opposite party No 2 for setling the account finally after disconnecting the connection In these circumstances no amount could be legally recovered from him as electricity dues. On the other hand learned counsel for the opposite parties contended that neither the power supplied to the petitioner was discontinued after June, 1973 as claimed by him nor any request from him for terminating the agreement was received by the opposite party No 2. But even assuming that such request was received by the opposite party No 2 under the terms of the agreement the petitioner was liable to pay minimum charges up to 26th January 1976

5 In order to appreciate the argument of the learned counsel for the petitioner it is necessary to have a look to the terms of the agreement dated 29th November 1966 Clauses 4 and 9 of the agreement read thus —

(4) The consumer shall pay for all the electrical energy supplied at the rates and in accordance with the rent terms in force for the time being and the signing of this agreement shall be held to imply the consumers concurrence to the terms and the rate in force for the time being and in any subsequent modifications or alteration thereof

(2) A fixed charge of Rs. 1 62 per month will be levied upon the consumer each month in addition to the charge for electricity consumed

(3) Provided nevertheless that if in any year commencing from the first day of the month of April following the date on which the supply is made available by the Electricity Board the value of the energy supplied for industrial or agricultural purposes or both calculated at the rates aforesaid (excluding the discount forfeited, if any) shall fall short of the guaranteed minimum as specified in item 4(b) of the said schedule the consumer shall pay the full guaranteed minimum amount as specified therein The Executive Engineer Hydro Electric Division Varanasi on behalf of the Chairman shall have the right to disconnect and remove the line service connection and meters, if the consumer fails to pay the deficiency in the guaranteed minimum payments within one month of the receipt of a bill from the Electricity Board calling upon him to pay the said deficiency provided that the disconnection or removal of the line or both, under this clause or under any clause of this agreement, such as for non-payment of electrical dues or any other dues of the Electricity Board or the like shall not absolve the consumer from his liability of paying to the Electricity Board the minimum charges for the whole period of five years.

(a) (b) (c) & (4)

"9(1) The consumer shall not be at liberty save with the consent of the Electricity Board to determine this Agreement before the expiration of five years from the first day of April following the date of commencement of the supply hereunder and the Electricity Board may give its consent subject to the condition that the consumer pays the minimum

guaranteed charges for five years or damages stipulated in Clause 4(3) herein The consumer may determine this Agreement at any time after the said period subject to sub-clause (2) herein on giving to the Electricity Board not less than thirty days notice in writing in that behalf and upon the expiration of the period of such notice this Agreement will cease and determine save and except for the settlement of all accounts outstanding between the Electricity Board and the consumer and without prejudice to the rights or remedies (if any) which may have accrued to the Electricity Board hereunder in the meantime

(2) After the expiry of the said minimum period of five years the consumer will not be bound to retain the connection But if he does so the supply will be deemed to have been continued by the Electricity Board on a year to year basis on the terms and conditions herein contained unless and until the Electricity Board directs otherwise in writing in which case the consumer shall be bound by the direction so made in writing, provided that if the consumer ceases taking supply during the course of a year after the expiry of the aforesaid five years, he shall be liable to pay the minimum guaranteed charges on yearly basis.

(3) & (4)

6. A plain reading of the aforesaid provisions of the agreement indicates that the petitioner had to pay minimum charges for the guaranteed period of five years and thereafter on yearly basis till the termination of the agreement by him by means of the written notice provided if taking of the supply was stopped during the course of the year he had to pay minimum charges for that entire year This being so, the claim of the petitioner that no electricity was supplied after 1973 and that he had written to the opposite party No 2 for disconnecting his connection permanently by his letter dated 4-4-1975 and 13-6-1975 is of no help to him. Under the terms of the agreement he has to pay minimum charges up to 26th January 1976 while according to the allegations in paragraph 9 of the counter-affidavit which have not been denied in the rejoinder affidavit the amount sought to be recovered from him relates to the period up to September 1975

7. It is next contended by the learned counsel that the opposite party No 3 was not legally justified in issuing recovery certificate to the opposite party No 4 under S 5 of the U P Government Electricity Undertaking (Dues Recovery) Act, 1958 without serving a notice upon the petitioner under S 3 In paragraph 21 of the counter affidavit which has not been denied in the rejoinder affidavit the opposite parties have stated that necessary notice under S 3 was sent to the petitioner per registered post on 12 12 1975 Explanation I of S 3 provides that the sending of notice by registered post shall be deemed to be sufficient notice on the person concerned. This being so, once a notice under S 3 was sent to the petitioner per registered post on 12 12 1975 the petitioner cannot claim that recovery certificate under S 5 was issued against him without sending a notice of demand under S 3 of the aforesaid Act. Thus this contention of the learned counsel for the petitioner has also no substance

8 Learned counsel further contended that modes of recovery of land revenue contemplated under S 279 of the Act relate to the recovery of land revenue only and not to other sums of money which are recoverable as land revenue According to him such dues can be recovered as arrears of land revenue only by resorting to the mode prescribed under sub-section (2) of S 266 of the Act and not by arrest and detention of the petitioner a mode prescribed under Ss 279(1)(b) and 281 of the Act. The procedure for recovery of arrears of land revenue is to be found in S 279(1)(b) and other cognate provisions in Chapter X of the Act. Section 279 of the Act reads thus —

279 Procedure for recovery of an arrear of land revenue — (1) An arrear of land revenue may be recovered by any one or more of the following processes

(a) by serving a writ of demand or a citation to appear on any defaulter

(b) by arrest and detention of his person,

(c) by attachment and sale of his movable property including produce

(d) by attachment of the holding in respect of which the arrear is due

(e) by lease or sale of the holding in respect of which the arrear is due

(f) by attachment and sale of other immovable property of the defaulter and

(g) by appointing a receiver of any property movable or immovable of the defaulter

(2) The costs of any of the processes mentioned in sub-sec (1) shall be added to be recoverable in the same manner as the arrears of land revenue

9 Section 279 provides seven modes for recovery of arrears of land revenue while Ss 280 to 286A provide procedure to be followed in case of each of seven modes. The procedure to be followed while taking recourse to the modes provided under Clauses (b) and (f) of sub-sec (1) of S 279 are contained in Sections 281 and 286 which read thus

281 Arrest and detention — Any person who has defaulted in the payment of an arrear of land revenue may be arrested and detained in custody up to a period not exceeding 15 days unless the arrears including costs, if any recoverable under sub-sec (2) of Section 279 are sooner paid

Provided that no woman or minor shall be liable to arrest or detention under this section

Provided further that no person shall be liable to arrest or detention for an arrear in respect of a holding of which he is not the bhumidhar merely because of his joint responsibility for the payment of land revenue under Section 243"

286 Power to proceed against interest of defaulter in other immovable property —

(1) If any arrears of land revenue cannot be recovered by any of the processes mentioned in Clauses (a) to (e) of Section 279 the Collector may realise the same by attachment and sale of the interest of the defaulter in any other immovable property of the defaulter

(2) Sums of money recoverable as arrears of any specified land, may be recovered by process under this section from any immovable property of the defaulter including any holding of which he is a bhumidhar or assami.

10 After going through the various provisions of the Act and the Rules we find that Ss. 279 to 285 and rules framed thereunder make no distinction between land revenue and sums of money recoverable as arrears of land revenue. It is only in S 286 that a distinction has been drawn between arrears of land revenue and sums of money recoverable as arrears of land revenue While sub-sec (1) of S 286 provides that if any arrears of land revenue cannot be recovered by the processes mentioned in Clauses (a) to (e) of sub-sec (1) of S 279 the same may be realised by attachment and sale of immovable property of the defaulter Sub-sec (2) of S 286 provides that sums of money recoverable as arrears of land revenue but not due in respect of any specified land, may be recovered by process under this section from any immovable property of the defaulter including any holding of which he is a bhumidhar or assami. In our opinion, the distinction between the two sub-clauses of S 286 is that while under sub-sec (1) which deals with the recovery of arrears of land revenue the dues can be realised by attachment and sale of the immovable property of the defaulter only if the same cannot be recovered by any of the processes mentioned in Clauses (a) to (e) of sub-sec (1) of S 279 there is no such restriction under sub-sec. (2) which deals with the recovery of sums of money recoverable as arrears of land revenue which means that for recovery of such dues recourse could be taken to the mode provided in Clause (f) of sub-sec (1) of S 279 irrespective of the fact that the same could be recovered by other processes mentioned in Clauses (a) to (e) of sub-sec. (1) of that section. Hence we are unable to accept the contention of the learned counsel that the modes prescribed under S 279 are not available for recovering the sums of money recoverable as arrears of land revenue and that such sums of money can be recovered only by the mode provided under sub-sec (2) of S 286 The arrears of land revenue and the sums of money recoverable as arrears of land revenue are kept at par under S. 279 and other cognate provisions of Chapter X of the Act except S 286 which deals with the mode prescribed under Clause (f) of sub-sec. (1) of S 279 Only because some distinction is made between the land revenue and the sums of money recoverable as arrears of land revenue under S 286, it cannot be said that the other modes contained in S 279 are not available for recovery of the sums which though not land revenue are recoverable as arrears of land revenue

11 Learned counsel lastly contended that

recourse to the provisions of Clause (b) of sub-sec (1) of S 279 could be taken only if it was proved that the petitioner did not possess sufficient movable and immovable property and other means to discharge his liability In our opinion this contention of the learned counsel is also without substance The intention of the Legislature can be well inferred from Clause (2) of S 251 which provides that after the arrest a defaulter shall be brought without delay before the officer who issued the warrant and shall not be detained in custody unless there is reason to believe that the process of detention will compel the payment of the whole or substantial portion of the arrear In our opinion recourse to the mode provided under Clause (b) of sub-sec (1) of S 279 for recovery of the arrear of land revenue can be taken only if a person possesses sufficient means to discharge the liability and not otherwise Our this view finds support from the decision of the Supreme Court in Ram Narayan Agarwal v State of U P reported in AIR 1984 SC 1213 The Supreme Court while interpreting the various provisions of the Act relating to the procedure for recovery of arrears of land revenue contained in Chapter X of the Act observed thus

Under this sub-rule there is necessity to enquire into the question whether the detention of the defaulter would be productive of payment of the arrear or a substantial portion thereof The officer concerned is, therefore required to decide on the basis of the material before him and any evidence tendered or submission made by the defaulter whether there is any justification for detaining him and it is only after he is satisfied that the detention of the defaulter will compel him to make the payment of the whole or a substantial part of the arrear he can order his detention. If he is not so satisfied the officer is under an obligation to release him."

In the result, the writ petition fails and is dismissed with costs.

Petition dismissed.

1986 ALL L J 408

R M SAHAI AND OM PRAKASH, JJ

M/s Synthetics and Chemicals Ltd Petitioner v Controller Weights and Measures, U P Lucknow and another Respondents

Civil Misc Writ Nos 9423 of 1981 3536 of 1982 and 963 of 1981 167 207 to 209 258 665 and 5119 of 1980 and 678 of 1983 D/ 5-12 1985

U P Weights and Measures (Enforcement) Act (5 of 1959), Ss 10, 2(jj) — Scope of — Weights and Measures having nothing to do with commercial transaction — Not amenable to jurisdiction of Inspector under S 10 to get the same verified and stamped (Standards of Weights & Measures Act (1976), Ss 21, 26)

The Inspector can invoke his jurisdiction under S 10 read with S 2(jj) of the Act only when a weight or measure is used in commercial transaction or in connection with any assessment of duty etc or in connection with the assessment of any work done or services rendered. If somebody uses weight or measure for determining the quantity of anything for his own satisfaction or for a purpose having nothing to do with commercial transaction affecting the public or with an assessment of duty etc or with an assessment of any work done or services rendered, then he cannot be called upon by the Inspector with stamp of verification to get such weight or measure verified and stamped. The definition as given in S 2(jj) is too wide Not only the weight or measure which is used in commercial transaction, but the weight or measure which is used for making an assessment of royalty toll, duty or other dues, or for making the assessment of any work done or services rendered, also comes within the ambit of the expression use in transaction for trade or commerce (Para 8)

Where in case of the manufacture of synthetic rubber the calibration device is fitted with the tanks containing alcohol and latex simply to ensure that the tanks were filled in with the requisite quantity of feeding material and the contents therein are not used for commercial transaction i e sale no question of any assessment of excise duty arises If the tanks

BD/CD/A916/86/SSG

containing raw material and latex are calibrated merely for operational purpose then S 10 read with S 2(g) cannot be applied to such tanks So also in the case of manufacture of camphor the storage tanks containing raw material and intermediary product are manifestly beyond the scope of S 10 of the Act. (Paras 10 11)

However in case of manufacture of liquor since the vats are being calibrated for the purpose of assessment and the bulk sales are made direct from the issue vats, they are covered by Cl. (b) of S 2(g) read with S 10 of the Act. The Inspector therefore does have the jurisdiction to call upon the manufacturers of liquors to make arrangement for getting their vats measured and verified by him.

(Paras 15 16)

N B Singh and S P Gupta, for Petitioner
Standing Counsel, for Respondents

OM PRAKASH, J — This is a fascicle of 11 writ petitions filed under Art. 226 of the Constitution of India by the petitioners challenging the orders of the respondent No 1 and the notices issued by respondent No 2 which are similar in all the writ petitions.

2. Whereas, the petitioner of the first set is engaged in the business of manufacture of synthetic rubber the petitioner of the second set carried on the business of manufacture of camphor and the petitioners of the third set produced a common item, i.e liquor in their distilleries Though the three sets of petitioners manufacture different commodities, but to test the validity of the orders of the respondent No 1 and of the notices issued by respondent No 2 these writ petitions can be conveniently decided together and hence they are consolidated and are being decided by a common order

3 The petitioner in the first writ petition produced synthetic rubber for which a highly sophisticated machinery was imported from U S.A. In the factory premises, there are several tanks, some of them are used for storing raw material, i.e alcohol and in some tanks, intermediary products, namely styrene and solution, called soap, which are excisable items, are stored. In third type of tanks known as process tank latex from which final product, i.e synthetic rubber is manufactured, is stored. After processing synthetic raw rubber which is nothing but a processing of latex solid synthetic rubber which is final product of the petitioner is manufactured.

4 In para 3 of the supplementary rejoinder affidavit it is stated by the petitioner that only two articles in liquid form, namely styrene and solution (soap) are manufactured. Raw material for manufacturing synthetic rubber is alcohol, which is also a liquid material. So the case of the petitioner is that the tanks are there in the factory premises to store the raw material, i.e alcohol, and the intermediary products, i.e styrene and solution (soap) It is categorically stated by the petitioner that tanks used for the purpose of storing the intermediary products, i.e styrene and solution (soap) are amenable to the jurisdiction of the respondent No 2 and there is no dispute in regard to them. The dispute according to the petitioner relates only to those tanks which contain raw material, i.e alcohol and a product, known as latex which is not sold by the petitioner as such The petitioner has been called upon by the respondent No 2 to make arrangements for converting weighing instruments of all the tanks, which are presently calibrated by pound system, into the standard weight i.e kilogram system, and get them measured and stamped by the respondent No 2 The case of the petitioner is that the respondent No 2 has jurisdiction in respect of those tanks only, which are covered by S 10 of the U P Weights and Measures (Enforcement) Act, 1959 (for short the Act 1959) and not in respect of the tanks which are used for storing raw material, i.e alcohol, and intermediary product, namely latex which are not sold as such Since respondent No. 2 issued notices in respect of those tanks even, which are neither used for trade or commerce or which are not calibrated for the purpose of assessment of excise duty the correctness of the order of the respondent No 1 and of the notice of respondent No 2 which are Annexures 'V' and 'Γ' III & VI respectively to the first writ petition, has been assailed. It is said that the measuring device fitted with the tank, is for operational purposes and not for trade The plant is automatic and it starts operating when raw material in a given quantity is filled in the tanks and the calibration by

pound system of the tanks is simply to measure materials required for manufacture of final product.

5 With a little variation in facts challenged by the petitioner in second writ petition is almost the same. The final product of the petitioner is camphor. There are numerous tanks in the factory premises which are used for storing the raw material intermediary product and final product. This writ petition does not raise any grievance so far as the tanks containing final product are concerned. Raw material to manufacture camphor is turpentine oil and other chemicals. Processing of the raw material gave rise to several intermediary products. In para 9 of the writ petition it is stated that since the raw materials and intermediary products which are stored in the storage tanks are not meant for sale hence these tanks have never been certified or stamped by the Inspector. In para 7 of the writ petition it is stated that tanks are provided with float arrangement with a view to having an idea of consumed and left over quantity stored in the tanks. This is only to enable the petitioner to make arrangement of materials well in advance and to prevent the abrupt closure of the factory for want of materials. The only difference between the case of this petitioner and case of the petitioner in the first writ petition is, whereas the former denies any trading activity in so far as intermediary product is concerned, the latter admittedly traded in the intermediary products namely styrene and solution (scap)

6 Then come the cases of the petitioners third set, who manufacture Indian made foreign liquor and country liquor. The liquor is stored in vats. Vat is defined in Rule 45 of the Rules under the U.P. Excise Act, meaning as fixed vessel used for the storage of liquor. The common case of the petitioners of the third set is that liquor is sold in bottles, which are kept in bonded warehouse. The duty is said to have been assessed on them when they are removed from the bonded warehouse. The contention of the petitioners, therefore, is that the trading activity starts when the bottles are removed from the bonded warehouse on payment of duty and before that when the raw material is processed and the liquor is stored in the vats, there is no trading activity. So the petitioners denied their liability to get the vats measured and stamped under the Act, 1959. In short the petitioners contended that so long as the Liquor remained in the vats neither there was trading activity nor were the vats calibrated for the purpose of assessment within the meaning of S. 2(jj) of the Act, 1959.

7 The common case of the petitioners, therefore is that the tanks or vats, as the case may be which are not covered by S. 10 read with S. 2(jj) of the Act, 1959 are not required to be measured and stamped and the Inspector has no jurisdiction to call upon the petitioners to get their tanks or vats verified and stamped under the Act, 1959. On the other hand, the contention of the respondents is that the petitioner of the first set is a commercial concern and therefore, all the tanks belonging to it are linked with its trade and, therefore prohibitory legislative measure i.e. S. 10 clearly applies to the tanks containing raw material i.e. alcohol, and the intermediary product, namely Lactic. Regarding tanks containing raw material and the intermediary product belonging to the petitioner of the second set, it is said by the respondents — that their volume is measured and assessed at different processing stages, so that a correct final product may be obtained and account of each processing stage may be maintained. Whereas, according to the petitioner float is provided with storage tanks to have the knowledge of the raw material or feeding material and save the factory from being closed abruptly on account of short supply of the materials. The respondents state that in calibrating instrument is to have full account of manufacturing at various stages. Against the vats situate in the various distilleries of the petitioners of the third set, the contention of the respondents is that they are being calibrated by the Excise Authorities and, therefore, it is evident that the calibration is being done for the assessment of duty and for no other purpose. It is also contended that the petitioners of the third set have been selling liquor direct from the issue vats. This is how all the vats are said to have been covered by S. 10 read with S. 2(jj) of the Act, 1959.

8. It will be apposite to see the legal position first. Section 10 of the Act, 1959 runs as follows —

10. Prohibition of sale or use of unstamped commercial weight and measures —

No weight or measure or weighing or measuring instrument shall be used or be kept for use in any transaction for trade or commerce or be sold or delivered for such use unless it has been verified or re-verified in the manner prescribed and stamped in the prescribed manner by an inspector with stamp of verification

The expression use in transaction for trade or commerce has been defined in S 2(jj)[1] of the Act 1989 which runs as follows —

2(jj)[1] use in transaction for trade or commerce with its grammatical variation and cognate expressions, means use for the purpose of determining or declaring the quantity of anything in terms of measurement of length area, volume capacity or weight in or in connection with —

(a) any contract, whether by way of sale purchase exchange or otherwise or

(b) any assessment of royalty toll duty or other dues or

(c) the assessment of any work done or services rendered otherwise than in relation to research or scientific studies or in individual households for house-holds purposes

Section 10 gives rise to the legislative prohibition that no weight or measure of weighing or measuring instrument shall be used or be kept for use in any transaction for trade or commerce or for being sold, unless it has been verified and duly stamped in the prescribed manner by an Inspector of the Department The object of the enactment of the Act 1989 is to protect the interest of the consumer The legislature wanted to ensure by this Act that the consumer should get the quantity which he paid for and that he should not be cheated by a trader The general object of the statute or ordinances relating to weights and measures is to protect the interest of the public and prevent fraud or imposition. Ordinarily it is intended to provide a method by which purchasers of commodities may protect themselves from short weights or measures and be enabled to obtain the quantity of property bought and paid for It will be seen from S 2(jj)[1] which defines the expression use in transaction for trade or commerce that the defintion is not inclusive but exhaustive as the verb means has been used. Such definition has closed the door for importing any foreign words into S 2(jj)[1] There is little scope for interpretation of S 2(jj)[1] There is no need to take aid of dictionary to find out the meaning of trade or commerce These word, will only mean what has been stated in clauses (a) (b) or (c) of S 2(jj)[1] The point is what is actually prohibited u/s S 10 To understand it in most simplest terms, S 10 prohibits use of any weight or measure in any transaction for trade or commerce meaning as the use for the purpose of determining or declaring the quantity of anything in connection with —

(a) any contract, whether by way of sale purchase exchange or otherwise or

(b) any assessment of royalty toll duty or other dues or

(c) the assessment of any work done or services rendered

So if any weight or measure is to be used in connection with any commercial contract as defined in (a) to S 2(jj)[1] or in connection with any assessment of excise duty etc or in connection with the assessment of any work done or services rendered then it necessarily requires to be verified and stamped by the Inspector with the stamp of verfication If the weight or measure is such which is not used for any commercial contract by way of sale purchase exchange or otherwise or in connection with any assessment of duty etc or in connection with any assessment of any work done or services rendered then the legislative prohibition will not attract to such weight or measure An exception has been carved out in S 2(jj)[1] for the weight and measure, which are used in relation to research or scientific studies or in individual households for household purposes. The exception so made provides a clear clue that the weight or measure which has nothing to do with the commercial transaction or with the assessment of duty etc or assessment of any work done or services rendered, then it will not be amenable to the jurisdiction of the Inspector with stamps of verification. The Inspector can involve his jurisdiction only when a weight or measure is used in commercial transaction or in connection with any assessment of duty etc. or in connection with the assessment of any work done or services rendered. If somebody uses weight or measure for determining the quantity of anything for his

own satisfaction or for a purpose having nothing to do with commercial transaction affecting the public or with an assessment of duty etc or with an assessment of any work done or services rendered then he cannot be called upon by the Inspector with stamp of verification to get such weight or measure verified and stamped The definition as given in S 2(jj) is too wide Not only the weight or measure which is used in commercial transactions but the weight or measure which is used for making an assessment of royalty toll duty or other dues or for making the assessment of any work done or services rendered also comes within the ambit of the expression use in transaction for trade or commerce

9 The validity of the orders passed by the Controller and the notices issued by the Inspector in the cases of the petitioners has to be tested by the foregoing legal position For better understanding it is proper to deal with the case of the petitioner of each set separately

10 First we take up the case of the petitioner of the first set engaged in the manufacture of synthetic rubber In its factory there are four types of tanks containing raw material and the intermediary product The petitioner has challenged the jurisdiction of the Inspector only with regard to the tanks containing raw material and one of the intermediary product namely latex The tanks containing remaining intermediary product namely stearic and solution known as soap are admittedly subject to assessment of excise duty So the only point is whether the tanks containing raw material and one of the intermediary product namely latex fall within the scope of S 10 read with S 2(jj) Sri S P Gupta learned counsel for the petitioner submitted that the tanks containing raw material and latex are neither used commercially nor are they calibrated for the purpose of assessment of excise duty It is to be made clear at this stage that so far as cl (e) of S 2(jj) is concerned that cannot be invoked in the cases of the petitioners of first second and third set inasmuch as the tanks or vats have not been calibrated for the purpose of assessment of any work done or services rendered What is to be seen is whether cl (a) or (b) of S 2(jj) is applicable to the cases of the petitioners Sri Gupta submitted that the whole plant is imported and sophisticated one and it is automatically operative The tanks containing raw material i e alcohol and latex are being calibrated in pound system The Inspector called upon the petitioner to get the measuring device converted into standard weight i e from non metric system into metric system The burden of the submission of Sri Gupta is that when the tanks containing raw material and latex are not used for commercial transaction and the contents thereof are not assessable under excise law and if they are calibrated merely for operational purpose then S 10 read with S 2(jj) cannot be applied to such tanks He argued that the plant would go in operation when the tanks are filled in with the prescribed raw material and or intermediary product In short the argument is that calibration device is fitted with the tanks containing alcohol and latex simply to ensure that the tanks were filled in with the requisite quantity of feeding material There is no specific case of the respondents that the tanks containing raw material and latex are used in connection with the commercial transactions nor is there any case that these tanks are being calibrated for making assessment of excise duty The petitioner has categorically stated in the writ petition that the raw material and latex are not for the purpose of sale and therefore no question of any assessment of excise duty arises. The respondents have made an averment of general nature that the whole concern of the petitioner is commercial and therefore all the tanks are being used for commercial transactions There is no presumption that in a commercial concern everything is related to trade or commerce As against the specific case of the petitioner the presumptive averment of the respondents cannot be accepted To bring the case under S 10 read with S 2(jj) it was imperative for the respondents to state in the counter affidavit that the tanks containing raw material and latex are either used commercially or they are amenable to excise duty The respondents having failed in doing so we are of the view that the tanks containing raw material and latex are beyond the purview of S 10

11 The case of the petitioner of second set is almost the same as that of the petitioner of the first set The only difference between their cases is, whereas the former denied the

sale of intermediary products altogether the latter admitted the sale of two intermediary products. The petitioner of second set also has raised no dispute with regard to the tanks containing final product viz camphor. The question is whether tanks containing raw material and intermediary products are covered by S 10. As already pointed out, the case of the petitioner is that the float arrangement was provided with a view to having an idea of consumed and left over quantity stored in the tanks so that the arrangement to secure the requisite quantity of raw material and feeding material could be made well in advance to prevent abrupt closure of the factory for want of feeding material. It is interesting to see para 8 of the counter affidavit, in which it is admitted that the petitioner does not sell raw material and/or intermediary produce. But then it is stated ... it is quite clear that their volume is measured and assessed at different processing stages so that a correct final product may be obtained and account of each processing stage may be obtained. The averment of the respondents in para 8 is nearer to the case of the petitioner and is not opposed to that in that the former contended that the measurements enabled the latter to have manufacturing account at different stages. Even if the contention of the petitioner that float is provided with storage tanks to have the full idea of the feeding material and save the factory from being closed abruptly due to short supply is rejected and the contention of the respondents that the measuring instrument was installed to have full account of manufacturing at all stages is accepted to be correct, calibration of the tanks meant for storage of raw material or intermediary product cannot be said to be covered by S 10 read with cl. (a) or (b) of S 2(j). The petitioner having not traded in the raw material and intermediary products and no excise duty having been assessed on these items, the storage tanks containing raw material and intermediary product are manifestly beyond the scope of S 10 of the Act.

12 Then we take up to common case of the petitioners of the third set, manufacturing liquor. The manufacturing process in all the distilleries, we presume, would have been the same. No distinction or dissimilarity has been pointed out by the petitioners in their activity of manufacture. So it will suffice if we highlight the facts in one of the common writ petitions. We therefore state the facts from the writ petition No. ... of 1982. Sri S. C. Budhwar learned Counsel for the petitioners, argued that liquor is sold in bottles of standard measurement and that there is no sale direct from the vats. It was therefore contended that the vats are not involved in any trading activity. The argument was that the duty is leviable only when the bottles are removed from bonded warehouse for the purpose of sale and prior to the stage of levying excise duty in such case, the petitioner was connected without alternative in the assessment. This shows he argued that the Inspector acted wholly without jurisdiction by having issued notices to the petitioners calling upon them to make arrangement for getting their vats measured and stamped by him. He said that prior to the sale of liquor in bottles, neither the consumer nor did the Excise Department come into picture. At the first blush the argument looked very attractive but a deeper scrutiny of the matter reveals that the argument is devoid of any force.

13 Let us first have an idea of manufacturing process. In para 10 of the counter affidavit, it is stated that when the liquor is produced from the process of fermentation and distillation of molasses, it is collected in the receiver vats, then it goes to the storage vats and ultimately it is transferred to issue vats. This system is not denied in the rejoinder affidavit.

14 First it will be seen from para 2 of the rejoinder affidavit that the contention of Sri Budhwar that liquor is being sold only through bottles is not correct. The petitioner stated in para 2 of the rejoinder affidavit as follows —

> In case it is sold from the issue vats, then it is sold by measure by weight, or by volume as the case may be (emphasis ours).

It is therefore incorrect to say that the liquor was and is being sold only by bottles. In para 8 of the writ petition it is stated that liquor is also sold in bulk through vessels of varying quantities. The respondents clearly stated in the counter affidavit that the liquor was being sold in bulk from the vats. It is, therefore, clearly borne out that when the bulk sales are made, they are made direct from the issue vats.

15 Any way the question arising in the cases of distilleries has to be approached from a different angle It is admitted by the petitioners that the vats are being calibrated by the Excise Department The case of the petitioners however is that the vats are being calibrated by the Excise Department for administrative purpose In para 3 of the rejoinder affidavit it is stated that the vats are being calibrated by the Excise Department for their own satisfaction as to how much quantity of liquor has been manufactured and is stored in the various vats in order to prevent leakage and theft The stand of the respondents is that it is implied in the calibration of the vats that they are being calibrated for the purpose of assessment and hence they are covered by cl (b) of S 2(jj) read with S 10 of the Act 1959 It is also contended by the respondents that if the calibration of the vats is necessary for the purpose of assessment of excise duty then only the authorities of the weight and measure Department would be competent to verify the correctness of the measures being employed by the Excise Authorities as the latter are not competent to introduce their own weight or measurement What is the administrative purpose? Can the Excise Authorities exercise administrative control over the distilleries? These are important questions Law does not confer any power over the Excise Authorities to have administrative control over the distilleries In our opinion the administrative control will vest in the owners of the distilleries. The only function of the Excise Department is to assess and levy the excise duty and to take measures to prevent the duty evasion So all the activities of the Excise Department boil down to assessment The petitioners have not challenged the calibration being done by the excise personnels on the ground that though the calibration of the vats is not necessary and yet the Excise Authorities have been interfering with their functioning by calibrating their vats Unless the jurisdiction of the Excise Authorities for calibrating the vats is challenged and a decision is taken by the appropriate authority in appropriate proceedings that the Excise Authorities are not empowered to calibrate the vats in connection with the assessment, there is no justification in taking the contrary view that the calibration of issue vats is not being done in regard to assessment of duty It is evident from the calibration being done by the excise personnels that the calibration is being done in connection with the assessment of excise duty within the meaning of cl. (b) of S 2(jj) In these cases it is not necessary for us to go into the (illegible) the excise law but on admitted facts, it must be held that calibration of vats is being done for assessment purposes, because there is no other purpose of calibration being done by the excise people The petitioners having not challenged the jurisdiction of the Excise Authorities for calibrating the vats the only question that arose for our decision is whether the calibration is being done by the Excise Department for administrative purpose or in connection with the assessment of the excise duty within the meaning of cl (b) of S 2(jj) The petitioners having failed to show that the administrative control of the distilleries vested in the Excise Authorities the only inference that can be drawn is that the vats are being calibrated by the excise personnels in connection with the assessment of the excise duty

16 We are therefore of the considered view that calibration of the vats situated in the distilleries is fully covered by cl. (b) of S 2(jj) read with S 10 of the Act, 1959 The Inspector therefore does have the jurisdiction to call upon the petitioners of the third set to make arrangement forgetting their vats measured and verified by him

17 In the result the Writ Petitions Nos 9423 and 3536 of 1981 are allowed and the orders of the Controller and notices issued by the Inspector which are made Annexures to the aforesaid writ petitions, in so far as they relate to tanks containing raw material and latex in the case of the petitioner of the first set and to the tanks containing raw material and intermediary products in the case of the petitioner of second set, are quashed. The writ petitions of the petitioners of the third set are dismissed The parties are left to bear their own costs

Order accordingly

1986 ALL L J 415

K N SINGH AND A N DIKSHIT A JJ

Rajiv Sharma, Petitioner v State of U P and others, Respondents

Habeas Corpus Writ Petn No 3321 of 1985 D 19 11 1985

(A) National Security Act (65 of 1980) S 3(2) — Preventive detention — Public order and law and order — Grounds of extortion from person on whom detenu was not on good terms and of attempt to commit murder and snatching away bag containing salary of Govt employees — Incidents do not relate to public order

The first ground of detention related to extortion of money from a cinema owner in a secretive manner There was nothing on record to show that the detenu had been extorting money from the members of the public in an indiscriminate manner The alleged incident as contained in ground No 1 affected only a single individual with whom the detenu was not on good terms The second ground related to an offence of attempting to commit murder The third ground related to robbery alleged to have been committed by the detenu and his associates in snatching away the bag containing salary of Government employees

Held that, none of the three grounds related to public order instead each of them related to maintenance of law and order Therefore detention on that basis was not valid AIR 1985 SC 18 Rel on (Para 9)

(B) National Security Act (65 of 1980), S 3 — Detention — Alleged involvement of detenu in offence u/s 307, I P C — Complainant reporting that there being huge crowd it was not possible for them to recognise assailants — Investigation finding detenu s involvement — Detenu never sent up for trial — Non explanation of reasons for his non-prosecution — Detention not justified (Para 9)

(C) National Security Act (65 of 1980), S. 3 — Detention — Incident alleged to have been taken place on 27 3-84 — While order of detention passed on 24-2-85 — Detention invalid — A detention order on a ground which is old and stale is not permissible under the law (Para 10)

(D) National Security Act (65 of 1980) S 3(2) — Detention — Continued detention — Acquittal of detenu subsequent to judicial trial on same facts which formed basis of detention — Acquittal not on some technical ground — Continued detention of detenu unsustainable

Even after acquittal on the ground of benefit of doubt or on the ground of witnesses turning hostile under the pressure of a detenu or for other like reasons, it is open to the District Magistrate to satisfy himself regarding the necessity of detention of the detenu But where the detenu is acquitted subsequent to the judicial trial on the same facts which formed the basis of detention the continued detention of the detenu would be unsustainable as such a detention on a ground involving a detenu would be non existant Specially when the detaining authority failed to show that the petitioner s acquittal was on some technical ground which did not question the veracity of the first information report on the basis of which the petitioner was detained AIR 1982 SC 1257 Rel on (Para 12)

Cases Referred	Chronological	Paras
AIR 1985 SC 18	1985 Cri LJ 487	8
1985 All LJ 1222 (FB)		7
AIR 1982 SC 1257	1982 Cri LJ 1737	12

Vinod Kumar Sharma, for Petitioner Standing Counsel, for Respondents.

K N SINGH, J — By means of this petition under Art 226 of the Constitution the petitioner has challenged validity of his detention made under the order of the District Magistrate Agra, dt. 24-2 1985 issued under S 3(2) of the National Security Act.

2. The District Magistrate was satisfied that the petitioner s detention was necessary with a view to prevent him from indulging into activities prejudicial to maintenance of public order In exercise of his powers under S 3(2) of the National Security Act he issued an order on 24-2 1985 directing the petitioner's arrest and detention. The petitioner made a representation to the State Government. On the recommendation of the Advisory Board

AD/BD/A374/86/AAJ/SNV

the State Government rejected the petitioner s representation The petitioner was arrested on 24-2 1985 and since then he is continuing in detention

3 The grounds of detention as served upon the petitioner in compliance to section 8 of the Act disclose that the District Magistrate passed the detention order on three grounds In the first ground it is mentioned that Kuldip Kapoor owner of Shah Theatre Agra received a letter by post on 24-3-1984 directing him to reach Rose Garden on 27 3-1984 taking with him a sum of Rs 40 000/- between 12 and 12 30 noon The letter contained a threat that if he disclosed this fact to others his entire family will be wiped off Sri Kapoor met the Senior Superintendent of Police who arranged policemen in plain clothes to accompany Sri Kapoor to the Rose Garden at the appointed place There the petitioner approached Sri Kapoor and demanded the money Whereupon the policemen who were there in plain clothes caught hold of the petitioner A first information report was lodged at the police Station by Sri Kuldip Kapoor against the petitioner as a result of which Crime No 261 under S 386/386 I P C was registered against the petitioner at Police Station Hariparbat on 27 3 1984

4 In the second ground it is mentioned that on 1 11 1984 Amar Jyoti Singh and P N Jhakharia Manager Punjab National Bank went together to Shah Market at about 11 30 A M for making a telephone call Since there was no telephone they went towards Civil Lines to ascertain as to whether the Bank was open Meanwhile they were attacked by gun fire shots causing serious injuries to Amar Jyoti Singh A report of the incident was lodged at P S Hariparbat as Crime No 914 under S 307 I P C on 1 11 1984 During investigation of the crime the petitioner s involvement in the incident was found and he was arrested on 15 1 1985 in connection with the incident

5 The third ground states that Ram Dutt Gupta an employee of the office of Director of Agriculture Ramnagar lodged a first information report at Police Station Hariparbat Agra on 1 1 1985 against the petitioner and his associates under Ss 394/397 I P C According to the first information report Ram Dutt Gupta along with Brahmajeet Singh were returning back after withdrawing the salary of the employees of the Agriculture office from the State Bank of India in a jeep (U T R 2932) When they reached the office at that moment the petitioner along with three of his associates tried to snatch the bag containing the money from Brahmajeet Singh and at that very moment one of the associates of the petitioner threw away hand grenade When Brahmajeet Singh tried to run towards the office one of the petitioner s associates fired at him which caused injuries in his stomach Thereafter the petitioner and his associates were successful in decamping with the sum of Rs 52 910-70 On account of the incident there was sensation in the Agra City

6 The order of the District Magistrate further states that the petitioner was arrested on 15 1 1985 and he was in jail custody on 16-1 1985 a bail application was moved on behalf of the petitioner and there was every possibility of his being enlarged on bail Since the District Magistrate was satisfied that the petitioner s activities as mentioned in the three grounds disturbed public order the petitioner s detention was necessary to prevent him from indulging into similar activities prejudicial to maintenance of public order

7 Learned counsel for the petitioner urged that none of the three grounds on which the petitioner has been detained relate to public order instead they all relate to maintenance of law and order The scope and implication of public order and the circumstances in which public order is likely to be affected has been considered by a Full Bench of this Court in Habeas Corpus Petn No 11151 of 1984 (Ashok Dixit v State of U P) decided on 1 8 1985 (reported in 1985 All LJ 1222) The Full Bench held that public order generally means peace and tranquillity of the community at large It is an expression of wide connotation which signifies that the state of tranquillity prevails amongst the members of the society An act which affects the peace and tranquillity of the community at large affects the public order The activities prejudicial to maintenance of public order contemplate an activity which disturbs the society and the community in general Breach of law and order creates disorder but every disorder does not affect public order If the activities of a person have no potentiality to affect public peace and tranquillity the same would not relate to public

order instead they would fall within the purview of law and order Even if an activity amounts to serious breach of law like murder dacoity or robbery but it does not create terror panic or if it does not affect the even tempo of the life of the community the offence or the crime howsoever reprehensible cannot be said to affect public order If by commission of an offence only individuals are affected and public at large is not affected the crime or the offence even though serious would only relate to law and order The Full Bench further held that every disturbance of law leading to disorder is not sufficient to invoke the extraordinary powers under the National Security Act unless the act in question endangered or was likely to endanger public order True test is not the kind but the potentiality of the act in question

8 In Ajay Dixit v State of U P AIR 1985 SC 18 it was held that murderous assault made on certain individuals in public place or firing at the police and committing murder in the market was not sufficient to invoke the powers under S 3(2) of the Act to detain a person as the incidents were not related to public order instead they related to maintenance of law and order

9 In the light of the aforesaid principles, the grounds, if examined in detail, would show that the nature of the grounds alleged against the petitioner are related to maintenance of law and order they have no nexus with public order The first ground relates to extortion of money from a cinema owner in a secretive manner There is nothing on record to show that the petitioner has been extorting money from the members of the public in an indiscriminate manner The alleged incident as contained in ground No 1 affected only a single individual Kuldeep Kapoor with whom the petitioner was not on good terms. The second ground relates to an offence of attempting to commit murder of Amar Jyoti Singh. This ground also by its nature was not likely to affect public order The third ground relates to robbery alleged to have been committed by the petitioner and his associates in snatching the salary of Government employees. The alleged crime is a serious one although reprehensible in nature, but by its nature it is not likely to affect the general peace and tranquility or public order No doubt sensation and panic may have been caused in the locality on account of the incident but that by itself is not sufficient to have the potentiality to affect the even tempo of the life of the community In our opinion therefore none of the three grounds relate to public order instead each of them relates to maintenance of law and order

10. Learned counsel for the petitioner made some additional submissions in assailing the validity of the petitioner s continued detention. We would like to consider those submissions It was submitted that the facts stated in ground No 1 are old and stale. We find considerable merit in the submission Ground No 1 relates to an incident which took place on 27 3-1984 while the order of detention was passed on 24-2 1985 The time lag between the alleged incident and the passing of the detention order is almost of a year It is now well settled that a detention order on a ground which is old and stale is not permissible under the law The incident alleged to have taken place on 27th Mar 1984 has no close proximity with the purpose and object of the detention order which was passed almost after a year

11 As regards the second ground, it was submitted that crime No 914 was registered at the police station under S 307 I P C on 1 11 1984 on the basis of a written first information report submitted by Amar Jyoti Singh On a perusal of the report of Amar Jyoti Singh (Annexure VI to the petition) it is apparent that neither Amar Jyoti Singh nor P N Jakhania could recognise the assailants. In his report Amar Jyoti Singh further asserted that there was huge crowd and it was not possible for them to recognise the assailants and for that reason he further stated that he was not interested in taking any action against anybody On the face of the assertion made by Amar Jyoti Singh himself in the report on the basis of which crime No. 914 was registered at the Police Station the petitioner could not be held responsible for the assault. In the ground, it is stated that during investigation the petitioner s involvement was found, but it is material to note that even after investigation the petitioner was never sent up for trial. the respondents have not explained reasons for non-prosecuting the petitioner

12. As regards the third ground relating

to commission of robbery by the petitioner admittedly the petitioner was prosecuted and he stood trial for the offence On the conclusion of the trial the Special Judge (Dacoity Affected Area) Agra, by his order dt. 8-10-1985 acquitted the petitioner of the charge under S 395 I P C. in respect of the allegations contained in the third ground A copy of the judgment has been filed by the petitioner along with a supplementary affidavit. On a perusal of the same we find that the learned Judge severely criticised the investigation of the case by the police and observed that the investigation was most faulty bordering on unfairness The petitioner was acquitted honourably The effect of the order of acquittal is that the petitioner was not involved in the incident as alleged in the third ground the basis of detention as contained in that ground therefore becomes non-existent. In Smt. Bimla Diwan v Lt Governor Delhi, AIR 1982 SC 1257 it was held that if the ground of detention related to an incident of criminal prosecution against the detenu and the detenu was acquitted in the prosecution, the order of detention would be invalid as in that situation the incident contained in that ground could not legitimately be taken into consideration for detaining the petitioner under S 3(2) of the Act It is true that in the instant case the order of acquittal was not in existence on the date the District Magistrate issued the detention order It would therefore follow that even if on the date the District Magistrate detained the petitioner on the basis of the impugned report contained in ground No 3 the order may have been valid but after the judicial pronouncement and acquittal of the petitioner the ground ceased to be valid for the continuance of the petitioner s detention on that ground We are conscious that even after acquittal on the ground of benefit of doubt or on the ground of witnesses turning hostile under the pressure of a detenu or for other like reasons, it is open to the District Magistrate to satisfy himself regarding the necessity of detention of the detenu But where the detenu is acquitted subsequent to the judicial trial on the same facts which formed the basis of detention, the continued detention of the detenu would be unsustainable as such a detention on a ground involving a detenu would be non-existent The detaining authority has failed to show that the petitioner s acquittal was on some technical ground which does not question the veracity of the first information report on the basis of which the petitioner was detained.

13. In view of the above discussion we are of the opinion that the petitioner s detention under S 3(2) is not sustainable on any of the three grounds.

14 We accordingly allow the petition and direct the respondents to release the petitioner forthwith unless he is required to be detained in some other case

Petition allowed

1986 ALL. L. J 418

K N MISRA J

Sukh Lal and another Petitioners v Deputy Director of Consolidation Fatehpur and others Opposite Parties

Civil Misc Writ Petn No 7340 of 1983 D/ 24-9 1985

(A) U P Consolidation of Holdings Act (5 of 1954), Ss 44 A, 9 A — Claim for share in disputed holding — Objection under S 9-A — Filing of — Forum — It should be an authority superior to Asstt Consolidation Officer and not any other superior authority exercising appellate or revisional jurisdiction under the Act

It is well settled that any person can file objection under S 9 A or claim right title and interest or share in respect of any holding recorded in the basic year Khataunt in the name of other tenure-holder This objection could be presented before the Assistant Consolidation Officer The Consolidation Officer could also entertain the objection in view of the provisions contained under S 44A which provides that where powers are to be exercised or duties to be performed by any authority under the Act or the rules framed thereunder such powers or duties may also be exercised or performed by an authority superior to it The words an authority superior to it in S 44-A can very well be construed to give jurisdiction only to an authority superior to the Assistant

Consolidation Officer namely the Consolidation Officer to entertain an objection filed under S. 9-A and not to any other superior authority exercising appellate or revisional jurisdiction under the Act namely the Settlement Officer Consolidation or the Deputy Director of Consolidation.

(Para 8)

Where A filed an objection claiming 1/3rd share along with the petitioners in the disputed holdings before the Settlement Officer Consolidation it would not be maintainable. Nor he could make reference for condoning the delay in filing the objection and for deciding the objection on merits. (Para 8)

(B) U. P. Consolidation of Holdings Act (5 of 1954), S. 9-A — Proceedings on objection — Inquiry — Statement recorded by any officer therein — Cannot be taken to be binding statement on parties in a judicial proceeding unless the officer proceeds to record the statement of witnesses in presence of the parties after affording them due opportunity of cross-examining witnesses.

(Para 10)

(C) U. P. Consolidation of Holdings Act (5 of 1954), S. 48(3) — Order under — Validity — Deputy Director accepting report of Settlement Officer and passing final order making report part of his order — No exception can be taken to the order — When Deputy Director generally has agreed with the report, contents of report were not required to be repeated by him in his order. (Para 7)

Satya Prakash, for Petitioners. Standing Counsel for Opposite Parties.

ORDER — Briefly stated, the facts of the present case are as follows —

Sometimes in the year 1970 one Sheo Lal son of Soni had taken plot Nos. 427/2, 427/3, 443, 444 and 567 situate in village Sarhan Khurd, district Fatehpur on lease from Gaon Sabha. His name was duly mutated on the said plots on the basis of lease. Sheo Lal is said to have died in the year 1971. The petitioners case is that he had left a widow named Smt. Ghasitiya who resides at her father's place. He left no issue. The petitioners further claimed that since Smt. Ghasitiya had some long time back left Sheo Lal as he was a leper and disabled person, and, as such, after death of Sheo Lal the aforesaid plots, which he had acquired on lease from Gaon Sabha had devolved on them being his real brothers. The names of the petitioners were accordingly mutated in the year 1971 on the said plots. The village Sarhan Khurd was brought under consolidation operations in the year 1972, and as such in the base year Khataunt the names of the petitioners were recorded as tenure holders over the aforesaid plot Nos. 427/2 etc. It has been averred in the writ petition that Shyam Lal, Shiv Raj, Shiv Lal son of Mangali, Chiranji, Sohan Lal, Ram Dhin and Shivram had filed objection under Section 9-A of the U. P. Consolidation of Holdings Act (for short the Act) against the petitioners claiming that they were in possession over plot No. 427 and they have thus, acquired Sirdari rights by adverse possession. No objection was however filed by any other persons or by the Gaon Sabha in respect of other aforesaid remaining plots. This objection was rejected by the Consolidation Officer vide order dated 19.1.1973 on the basis of compromise filed by Shyam Lal and others in which they admitted the title and possession of the petitioners over the said plot No. 427 about which they had filed objection. The petitioners were also allotted chak in respect of the entire aforesaid land in dispute and they claimed to be in possession over the same.

2. It has also been averred in the writ petition that besides the aforesaid plots No. 427/2 etc. the petitioners are tenure holders of the land recorded in their names in the basic year Khataunt over Khata Nos. 205, 211, 41, 42, 105, 163, 166, 184 and 189 situate in village Sarhan Khurd. In respect of these land holdings petitioners were also allotted chak and they claimed to be in exclusive possession as sole tenure holder thereof. No objection was filed by any person in respect of said land either at the stage under Sec. 9-A or at the stage under Section 20 of the Act.

3. It appears that an application was moved by opposite parties Nos. 3 to 24 before the Settlement Officer Consolidation stating that plot Nos. 427/2, 427/3, 443, 444 and 567 which were let out by the Gaon Sabha to Sheo Lal son of Soni should have reverted to Gaon Sabha after death of Sheo Lal as he had died issueless. These plots were wrongly got

recorded by the petitioners in their names It was prayed that the names of the petitioners be expunged from the revenue records and the Gaon Sabha should be recorded therein Learned Settlement Officer Consolidation made inquiries in the matter and found that Sheo Lal son of Souni was not the real brother of the petitioners nor he had left any widow named Smt. Ghasitiya. He also visited the village where Smt. Ghasitiya was residing and took her statement. She in her statement deposed that she is not the widow of Sheo Lal son of Souni but she is widow of Ram Lal who was son of Sheo Balak and real brother of Sukh Lal and Pyare Lal. She further deposed that her husband Ram Lal was not nick named as Sheo Lal nor her father in-law Sheo Balak was named also as Souni. It appears that Smt Ghasitiya filed an objection on 15-4-73 before the Settlement Officer Consolidation wherein she asserted that she is entitled to 1/3rd share in the land of the aforesaid holding namely Khata Nos 205 211 41 42 105 163 166 184 and 187 of village Sarhan Khurd. She asserted that the land of these holdings initially belonged to Sheo Balak and that her husband had pre-deceased his father Sheo Balak 10-20 years ago and that her father in law Sheo Balak had died some 8 years ago The learned Settlement Officer Consolidation after taking statement of Smt Ghasitiya and after making inquiry in the matter submitted his report dated 1 5-1973 under Section 48(3) of the Act to the Deputy Director of Consolidation with the recommendation that the order dated 19-1 1973 which was passed in suit No 534 Sheo Balak v Sukh Lal decided by the Consolidation Officer on the basis of alleged compromise between the parties be set aside and the case in respect of aforesaid land which was leased out to Sheo Lal by the Gaon Sabha be decided on merits. He has also framed the necessary issues which he has referred in his reference report dated 1 5-1973 The learned Settlement Officer Consolidation also recommended that the delay in filing the objection dated 15-4-1973 filed by Smt. Ghasitiya before him be condoned and her claim with regard to 1/3rd share in the aforesaid land holding Khata No 205 etc. be decided on merits, after framing the relevant 5 issues which he had mentioned in his aforesaid reference report. This reference report has been accepted by the Deputy Director of Consolidation vide order dated 16-7 1973 He has set aside the order dated 19-1 1973 passed by the Consolidation Officer in Case No 534 which was in respect of plot No 427 and agreeing with the reference report in toto he made it part of his order meaning thereby that he directed the Consolidation Officer to decide the case on merits in respect of plot Nos. 427/2 427/3 443 444 and 567 which were recorded in the name of Sheo Lal on the basis of lease granted by the Gaon Sabha in his name and that the case be decided on merits also in respect of land of Khata Nos 205 211 41 42 105 163 166 184 and 189 regarding the claim of Smt. Ghasitia after condoning the delay under Section 5 of the Limitation Act. This order has been challenged by the petitioners in the present writ petition

4 I have heard learned counsel for the petitioners Sri Satya Prakash at some length and I have also heard Sri K B Garg learned counsel for the Gaon Sabha I have carefully perused the reference report and also the order passed by the Deputy Director of Consolidation which has been challenged in the present writ petition

5 Learned counsel for the petitioners urged that the Deputy Director of Consolidation has erred in accepting the reference report which was not based on correct facts and the learned Settlement Officer Consolidation has acted illegally and with material irregularity in entertaining the objection dated 15-4-1973 filed by Smt Ghasitiya purporting it to be objection under Section 9-A(2) of the Act which could not be legally entertained by him nor the delay could be directed to be condoned under Section 5 of the Limitation Act in filing the said objection without giving any opportunity of hearing to the petitioners on that point. Learned counsel had further urged that the reference report is also incompetent inasmuch as learned Settlement Officer Consolidation could not proceed to make inquiry in the matter on the basis of application filed by opposite parties Nos 3 to 24 concerning the land which was earlier recorded in the name of Sheo Lal son of Souni. Learned counsel further urged that the statements recorded by the Settlement Officer Consolidation of certain persons while making inquiry in the matter and also that of Smt. Ghasitiya could not be recorded by him behind the back of the petitioners Learned counsel further urged that one of the petitioner's son

Pyare Lal had not given any statement to the Settlement Officer Consolidation but he was made to put his thumb impressions on some papers at the behest of the Settlement Officer Consolidation who had also rebuked him and had threatened him with dire consequences in case he will not affix his thumb impression Learned counsel thus urged that whatever statement has been recorded by the Settlement Officer Consolidation while making inquiry in the matter and submitting reference report cannot be taken to be a valid piece of evidence nor the same could be relied in evidence Learned counsel had thus urged that the impugned order passed by the Deputy Director of Consolidation deserves to be set aside being a non speaking order and the same also stands vitiated because the reference report could not form part of his order which itself was based on inadmissible evidence recorded by the Settlement Officer Consolidation

6. In reply learned counsel for the Gaon Sabha urged that in accordance with the provision of Section 11 C of the Act if it is found that the tenure-holder has died issueless and the land had vested in the Gaon Sabha, the same would be directed to be recorded in the name of the Gaon Sabha. Learned counsel pointed out that in the present case Sheo Lal son of Souni was the tenure holder on the basis of lease granted by the Gaon Sabha. The petitioners had got their names mutated on the land belonging to Sheo Lal son of Souni who had died issueless. Learned counsel pointed out that the petitioners wrongly mentioned that Sheo Lal was also named as Ram Lal and that he was his real brother and that he had left a widow named Smt Ghasitiya who resides with her father Learned counsel thus urged that in these circumstances the Settlement Officer Consolidation had rightly proceeded to make inquiry in the matter and recorded the statement of Smt. Ghasitiya who had deposed that she is widow of Ram Lal who was son of Sheo Balak and that she is not the widow of Sheo Lal son of Souni. She had further deposed that her husband Ram Lal was not named as Sheo Lal. In these circumstances a prima facie case was made out for interference and the Settlement Officer Consolidation had rightly directed that the order dated 19-1 1973 which was passed by the Consolidation Officer on the basis of compromise between the petitioner and the claimants in respect of plot No 427 deserved to be set aside and the case in respect of plot belonging to Sheo Lal son of Soni deserves to be decided on merits. Learned counsel thus urged that the issues which have been referred in the reference report are very material issues and the Settlement Officer Consolidation has rightly made a reference to the Deputy Director of Consolidation. Learned counsel could not point out any other provision under the Act which could enable the Settlement Officer Consolidation to entertain the objection dated 15-4-1973 filed by Smt. Ghasitiya under Section 9 A(2) of the Act excepting Section 44-A which provides that where powers are to be exercised or duties to be performed by any authority under this Act or the Rules framed thereunder such powers or duties may also be exercised or performed by an authority superior to it Learned counsel thus contended that in view of Section 44-A the Settlement Officer Consolidation could entertain the objection filed by Smt. Ghasitiya under Section 9 A(2) of the Act and the learned Deputy Director of Consolidation has not erred in accepting the report in respect of the objection filed by Smt. Ghasitiya pertaining to the land of Khata No 205 etc referred to above I have carefully considered the arguments of the learned counsel for the parties

7 So far as the land which was recorded in the name of Sheo Lal son of Souni namely plot No 427/2 etc is concerned the crucial question involved in respect of this land is whether Sheo Lal son of Souni was the real brother of the petitioners or not and also whether Smt Ghasitiya was the widow of Sheo Lal son of Souni or not ? The Settlement Officer Consolidation has mentioned relevant issues to be framed in respect of it. If Sheo Lal son of Souni was not the real brother of the petitioners the land which was leased out by the Gaon Sabha could not devolve on them and the revenue records deserved to be corrected in respect thereof In that view of the matter I do not find any error has been committed by the Deputy Director of Consolidation in accepting the reference report so far as the report relates to land which was recorded earlier in the name of Sheo Lal son of Souni namely plots Nos. 427/2, 427/3, 443 444 and 567 and also in setting aside the order dated 19-1 1973 passed by the Consolidation Officer which was in respect of plot No 427 initially recorded in

the name of Sheo Lal son of Souni on the basis of lease granted by the Gaon Sabha. The learned Deputy Director of Consolidation has accepted the report of the Settlement Officer Consolidation and it has been made to form part of his order No exception can be taken to this order because when generally he has agreed with the report of the Settlement Officer Consolidation the contents of the report were not required to be repeated by the Deputy Director of Consolidation in his order It would suffice if the Deputy Director of Consolidation had accepted the report and directed it to form part of his order In this view of the matter I do not find any merit in the contention of the learned counsel for the petitioner who had challenged the order passed by the Deputy Director of Consolidation on the ground that the report passed by the Settlement Officer Consolidation could not be made to form part of the final order passed under S 48(3) of the Act by the Dy Director of Consolidation

8. But so far as the reference report relating to land of Khata No 205 etc is concerned. I find that the same cannot be sustained and deserves to be quashed. It is well settled that any person can file objection under S 9-A or claim right, title and interest or share in respect of any holding recorded in the basic year Khataun in the name of other tenure holder This objection could be presented before the Assistant Consolidation Officer The Consolidation Officer could also entertain the objection in view of the provisions contained under S 44-A which provides that where powers are to be exercised or duties to be performed by any authority under this Act or the rules framed thereunder such powers or duties may also be exercised or performed by an authority superior to it. The words an authority superior to it in S 44-A can very well be construed to give jurisdiction only to an authority superior to the Assistant Consolidation Officer namely the Consolidation Officer to entertain an objection filed under S 9-A of the Act and not to any other superior authority exercising appellate or revisional jurisdiction under the Act namely the Settlement Officer Consolidation or the Deputy Director of Consolidation. If the intention of the legislature would have been to confer jurisdiction on any superior authority to exercise power or to perform duties under the Act, the words should have been "such powers can be exercised or duties to be performed by any authority superior to it be it an appellate or revisional authority superior to it In this view of the matter the Settlement Officer Consolidation could not entertain the objection dated 15-4-1973 filed by Smt. Ghasitiya claiming 1/3rd share along with the petitioners in the holdings Khata No 205 etc nor he could make reference for condoning the delay in filing the objection and for deciding the objection on merits The reference report in respect of Khata No 205 etc has also been accepted by the Deputy Director of Consolidation which deserved to be quashed for the reasons aforesaid instead of being accepted by the Deputy Director of Consolidation Smt Ghasitiya could present her objection dated 15-4-1973 before the Assistant Consolidation Officer or before the Consolidation Officer along with an application seeking condonation of delay Her objection was therefore illegally entertained by the Settlement Officer Consolidation and it deserves to be returned back to her for presenting before the Assistant Consolidation Officer or the Consolidation Officer if she may so like If such objection would be presented by Smt Ghasitiya, the petitioners would get an opportunity of opposing it and it would be open to the Consolidation Officer to decide whether delay in filing the objection be condoned or not after giving opportunity of hearing to the petitioners on that point If he finds that the delay deserves to be condoned, then after passing appropriate order with regard to condonation of delay he would proceed to decide the case framing the necessary issues which may arise on the pleadings of the parties in respect of the land of aforesaid holding Khata No 205 etc The reference report as well as the order passed by the Deputy Director of Consolidation in respect of the aforesaid Khata No 205 etc on the basis of objection dated 15-4-1973 cannot be sustained and deserves to be quashed.

9 Learned counsel had strenuously contended that whatever evidence has been recorded by the Settlement Officer Consolidation while making inquiry in the matter relating to the land which was recorded in the name of Sheo Lal son of Souni or in respect of Khata No 205 etc the same cannot be taken to be a piece of evidence against the petitioners in the present proceedings. Learned counsel had contended that the statement of

witnesses were recorded behind their back and he had further contended that the petitioner's son had not given any statement to the Settlement Officer Consolidation but he was made to put his thumb impressions on some papers at the behest of the Settlement Officer Consolidation

10 So far as this agrument is concerned it would suffice to say that any statement recorded by the Settlement Officer Consolidation while making inquiry in the matter cannot be taken to be a statement referable in judicial proceedings relating to aforesaid so far as the petitioners are concerned because the statement cannot be taken to have been recorded in the reference proceedings after giving opportunity to the petitioners of hearing in the matter or to cross examine the witness. Statement recorded by any Officer in an inquiry cannot be taken to be a binding statement on the parties in a judicial proceeding unless the Officer proceeds to record the statement of witnesses in presence of the parties after affording them due opportunity of cross examining the witnesses. Thus whatever statements were recorded by the Settlement Officer Consolidation in the inquiry made by him would not be relevant and the Consolidation Officer would proceed to decide the case in respect of plot No 427/2 etc after giving due opportunity of hearing to the parties and after taking evidence of the parties afresh. The Consolidation Officer will proceed to decide the case after giving due notice to the Gaon Sabha as well If the objection is filed by Smt Ghasitiya which is directed to be returned to her for presentation before the Assistant Consolidation Officer or before the Consolidation Officer or some fresh objection the same would also be decided on merits in accordance with law uninfluenced by the evidence taken by the Settlement Officer Consolidation or by any observation made by him in his reference order

11 In the result the writ petition partly succeeds and is hereby allowed in part The reference order dated 1 5-1973 so far as it relates to land of Khata Nos 205 211 41 42 105 163 166 184 and 189 situate in village Sarhan Khurd P O Makrandpur Pargana Kora, District Fatehpur is hereby set aside and the impugned order dated 16-7 1973 passed by the Deputy Director of Consolidation in respect of the aforesaid holdings, which is passed on the report of the Settlement Officer Consolidation is also quashed to that extent The reference report dated 1 5 1973 and the order dated 16 7 1973 so far as it relates to plot Nos 427 2, 427 3 443 444 and 567 in respect of which lease was granted to Sheo Lal son of Soum is hereby maintained and the Consolidation Officer will proceed to decide the case after framing necessary issues and after giving the opportunity to the parties of hearing in accordance with law and in the light of observations made above

12 In the circumstances of the case the parties are directed to bear their own costs

Petition partly allowed

1986 ALL L J 423

V K KHANNA J

Radha Kishan and others Petitioners v Smt. Premwati Devi and others Respondents.

Civil Misc Writ Petn No 11076 of 1980 D 24-1-1985

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 20(4), Explanation (as amended by U P Act No 28 of 1976) — Suit for ejectment and arrears of rent — Summonses served on four out of six tenants — Date of hearing mentioned in summonses would be first date of hearing as regards four tenants — Entire dues deposited — Summonses on remaining defendants served on some later date — First date of hearing does not change — No default for non-payment of costs subsequent to first date of hearing

Plaintiff filed a suit for ejectment and arrears of rent against six defendants holding joint tenancy Summonses of suit were served on four defendants who deposited the entire amount of rent due costs interest as contemplated by S 20(4) before the date of hearing mentioned in summonses served on them

Held, that the date mentioned in summonses would be treated as first date of hearing in view of S 20(4) Explanation Since they complied with requirements of S 20(4) they would be relieved of their liability for eviction on ground of being defaulters. The view that

---

AD/CD/A394/86/MS/MVJ

to avail benefit of S 20(4) defendants had also to deposit the costs incurred after first date of hearing by way of summonses served on remaining two defendants on some later date would be erroneous and liable to be set aside

(Para 5)

Satish Chandra Srivastava for Petitioners
S L Khan Standing Counsel for Respondents

ORDER — This writ petition has been filed against an order of the V Additional District Judge Aligarh dated 13 10 1980 allowing the revision filed by Smt Premwati landlady against the decision of the Judge Small Cause Court (Munsif Hathras) dismissing plaintiff's suit after holding that defendants were entitled to benefit of Section 20(4) of U P Act No XIII of 1972 (hereinafter referred as Act)

2. The brief facts for the purposes of deciding present writ petition are that Smt Premwati landlady filed a suit for ejectment and recovery of arrears of rent against six defendants tenants (petitioners and respondents 2 and 3) It appears that summonses of the suit were served on four defendants i e petitioners They were served before 23-1 1979 The date of hearing mentioned in the summonses served on petitioners was 24 1 1979 The petitioners put in appearance and deposited the entire amount of rent due costs of the suit and interest up to 27 1 1979 on 23-1 1979 The trial Court gave benefit of Section 20(4) of the Act to the defendants petitioners on the basis that there had been due compliance of the provisions of the aforesaid section and thus plaintiff could not get relief for ejectment on the ground of the defendants being defaulter in respect of payment of rent despite notice of demand Feeling aggrieved the landlady Smt. Premwati preferred a revision which has been allowed under the impugned order The revisional Court has held that as there was a joint tenancy and the Court could not pass an order decreeing the suit for eviction against some tenants and dismissing the suit against the others, the defendants were bound to deposit all the costs of the suit even though it was incurred after 23-1 1979

3. Learned counsel for the petitioners has challenged the aforesaid decision given by the revisional Court on the ground that as far as the petitioners are concerned they had according to the findings recorded under the impugned order deposited the entire amount on the first date of hearing and thus they were entitled to benefit of S 20(4) of the Act

4. Learned counsel for the respondent landlady has however urged that as the tenancy was joint the date of first hearing in the suit will be the date on which all the defendants had been served and not the date of hearing which was mentioned in the summonses served on the petitioners

5. Section 20(4) of the Act clearly specifies in the Explanation added by U P Act No 28 of 1976 that for the purposes of this sub-section the expression first hearing means the first date for any steps or proceedings mentioned in the summonses served on the defendants It has not been disputed before me that as far as the petitioners are concerned they had deposited the entire amount of rent due costs and interest as contemplated by Section 20(4) of the Act before the date of hearing mentioned in the summonses served on them The suit by the plaintiff has been filed against the four petitioners and two respondents and each of these defendants was entitled to avail benefit of Section 20(4) of the Act Any deposit which would have been made by any of the defendants under the aforesaid section would have been made for the benefit of all the defendants As far as the petitioners are concerned the summonses served on them mentioned the date of hearing and that would be the date which would be treated as the date of first hearing The petitioners had duly complied with the requirements of Section 20(4) of the Act before the date of first hearing intimated to them by summonses. No decree could thus be passed for eviction of the defendants on the ground that they were defaulters in payment of rent The view taken by the revisional Court under the impugned order that to avail benefit of Section 20(4) of the Act the defendants had also to deposit the costs incurred after the first date of hearing intimated to them is patently erroneous. The first date of hearing would not be changed for the petitioners only because of the fact that summonses had been served on the remaining defendants on some later date A bare reading

of Section 20(4) of the Act makes it clear that the legislature has clearly specified as to what would be the date of the first hearing, for the defendants so that there may not be any ambiguity in finding out the first date of hearing, and the defendants may be certain as to by which date they had to comply with the requirements laid down in Section 20(4) of the Act in order to get relieved of their liability for eviction on the ground of being defaulters. In my opinion the view taken by the Judge Small Cause Court was correct and the order of the revisional Court is liable to be quashed. The petitioners on the facts and circumstances of the case are entitled to the benefit of Section 20(4) of the Act.

6. For the reasons stated above the present writ petition is allowed and the judgment and decree of the Judge Small Cause Court is restored. Looking to the facts and circumstances of the case parties shall bear their own costs.

Petition allowed.

1986 ALL. L. J. 425

S. D. AGARWALA, J.

Shia Central Board of Waqfs, U. P. Lucknow Petitioner v. District Judge, Rampur and another, Respondents.

Civil Misc. Writ Petn. No. 1276 of 1977. D. 4-9-1985.

(A) Constitution of India, Art. 226 — U. P. Muslim Waqfs Act (16 of 1960), Ss. 33 and 49B — Order of Collector asking appellant to vacate land as it was waqf property — Delay in filing appeal and revision — District Judge condoning delay after considering facts and holding that sufficient cause was made out for condonation — It being a finding of fact cannot be interfered with in writ petition. (Para 4)

(B) U. P. Muslim Waqfs Act (16 of 1960), Ss. 49-B and 33 — Competent Authority — Dispute regarding unauthorised occupation — Property in dispute, part of registered waqf property — Person aggrieved can file appeal under S. 49-B, and not a reference under S. 33.

AD/CD/A394/86/MS/MVJ

Where the dispute was in regard to unauthorised occupation of a part of larger property which had been entered as property of waqf in the register of waqfs, the only remedy available to alleged unauthorised occupant against order of Collector asking him to vacate the suit land, would be to file an appeal under S. 49-B sub-cl. (4) of Act. He would have no right to file a reference under S. 33. 1985 All. L. J. 842. Followed.

(Paras 7, 9, 10)

Cases Referred Chronological Paras

1985 All. L. J. 842 8

R. H. Zaidi for Petitioner; A. K. Yog for Respondents.

ORDER — This is a petition under Article 226 of the Constitution of India. The facts giving rise to the present petition are as follows:

There existed a registered waqf, namely, Waqf Husaini Sarai, Rampur. The property in dispute is a strip of land being part of a larger piece of land which has been recorded in the register of waqf as the property of Waqf Husaini Sarai, Rampur. The petitioner Shia Central Board of Waqf, U. P. Lucknow issued a notice which was received by the respondent No. 2 Irshad Ali on 21.11.1974 asking him to vacate the land which was the property of the waqf. The Collector by an order dated 9-12-1974 asked Irshad Ali to vacate the land as it was waqf property. After this notice was received from the Collector Irshad Ali filed a Suit No. 40 of 1975 in the Court of Munsif, Rampur for a permanent injunction against the Waqf Board alleging that the Board has no jurisdiction to deal with the property as it was the waqf property.

2-3. Before the Munsif the petitioner Board took an objection that the suit was not maintainable. A preliminary issue was framed in regard to the maintainability of the suit. The trial Court did not agree with the petitioner Board. Thereafter the Board filed an Appeal No. 30 of 1976 in the Court of District Judge. In the Court of District Judge it was finally adjudicated upon that the Civil Court has no jurisdiction. Irshad Ali filed two proceedings against the order of the Collector: one was an appeal and the other was a reference to the Tribunal under the provisions of U. P. Muslim

Waqfs Act, 1960 Along with the appeal and the reference Irshad Ali also filed an application for condonation of the delay The District Judge by an order dated 20-1 1977 condoned the delay in moving the appeal as well as the reference and registered both the appeal and the reference It is this order dated 20-1 1977 which has been challenged in the present petition The learned counsel for the petitioner has contended firstly that the District Judge wrongly condoned the delay in filing the appeal and the reference The second submission of the learned counsel is that in any case no reference lies against the notice issued by the Collector and the reference is wholly without jurisdiction and the proceedings in the reference be quashed as two simultaneous proceedings against the same order are liable to create confusion and harassment to the petitioner

4 In my opinion so far as the first contention is concerned it has no substance The District Judge after considering the facts on the record came to the conclusion that sufficient cause has been made out for condonation of delay in filing appeal and the reference This is clearly a finding of fact and as such no interference is called for under Art 226 of the Constitution of India in this regard.

5 In regard to the second contention raised by the learned counsel in my opinion this contention is well founded Admittedly the property in dispute is a part of larger property which has been entered as property of the waqf in the register of waqfs. S 57 A of the Act clearly provides that If the Board is satisfied after making an inquiry that any person is in unauthorised occupation of any immovable property entered as property of waqf it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver the possession of the property to it

6. Sub-clause (2) of S 57A further provides that provisions of sub-secs. (2) (3) (4) (5) (6) and (7) of S 49-B shall mutatis mutandis apply in relation to a requisition under sub-sec (1) as they apply in relation to a requisition under sub-sec (1) of that section. In view of this provision, the provisions of S 49-B sub-cl (2) to sub-clause (7) would clearly apply After the receipt of a requisition of a Board, the Collector has to pass an order directing the person in possession to deliver the property to the Board Sub sec (4) of S 49-B of the Act is as follows —

Any person aggrieved by an order of the Collector under sub sec (2) may within a period of thirty days from the date of the service of the order prefer an appeal to the Court of the District Judge within whose jurisdiction the property is situate

7 In view of this provision after the Collector issued a notice to Irshad Ali that he is in unauthorised possession of the property he had a right to file an appeal before the District Judge

8. In Magan Nath Misra v Syed Shakir Ali Abidi 1985 All LJ 842 I had an occasion to interpret various sections of U P Muslim Waqfs Act 1960 On an analysis to various provisions I had clearly recorded my opinion that in a case where a dispute is in regard to unauthorised occupation of a property of a waqf entered in the register of waqfs then the aggrieved person had a right of appeal

9 Section 33 has also been considered by me in the case of Magan Nath Misra (supra) and it has been held by me that S 33 only applies to a case where the property has not been entered in a register of waqfs The principle laid down in this case fully applies to the present case

10 Since the property has been entered in the register of waqf the only remedy Irshad Ali has to file an appeal under S 49-B sub-cl (4) of the Act. He has no right to file a reference to a tribunal under S 33 of the Act In the circumstances, no reference lies to the tribunal and the entire proceedings in reference are wholly without jurisdiction

11 The petition is accordingly allowed The order of the District Judge dated 20-1 1977 is modified to the extent that the appeal shall be considered as having been filed within time but the proceedings in reference filed by Irshad Ali shall be quashed The appeal so filed by Irshad Ali shall be decided in accordance with law as expeditiously as possible since the matter is pending for a sufficiently long time The parties are directed to bear their own costs

Petition partly allowed

1986 ALL. L. J 427

V P MATHUR, J

State Applicant v Latoori Singh and others, Opposite Parties

Reference Nos 2 to 4 of 1984 D/ 19-2 1985

U P Dacoity Affected Areas Act (31 of 1983), S 7(1) Proviso — Applicability — Cases triable by Special Court pending before Sessions Court when Act came into operation — Transfer of cases to Special Court (Anti-Dacoity) after commencement of Act — There being no ambiguity in provisions of S. 7(1) proviso, transfer was justified (Paras 3, 4)

Addl. Govt Advocate for Applicant R S Yadav S P Srivastava and Rajendra Singh for Opposite Parties

ORDER — These are three references made by Sri P P Mathur the then Special Judge Dacoity Affected Area, Etah, by his submission dt July 3 1984

2 The brief facts of the matter are that three cases, namely S T No 281 of 1981 State Versus Latoori Singh S T No 490 of 1981 State Versus Shyam Singh, and S T No 460 of 1982 State Versus Nanhey were pending disposal in the district of Etah The prosecution story was that Satish Chandra was in the night between 17th and 18th Nov 1980 at about 11 30 p m. abducted from his grove situate in village Deoraiya, Police Station Patiyali, district Etah, by the seven accused of these three cases who were also accompanied by one Mahabir and 6 and 7 others. In addition to committing the offence of abduction under S 364 I P C these persons also committed the offence of dacoity punishable under S 395 I P C Some of these accused are also said to have committed the offence of criminal conspiracy under S 120B I P C in respect of the offence under Ss. 364 and 395 I.P C In all, thus, there were 12 accused out of whom one namely Raja Ram died These 12 persons in the night between 19th and 20th Nov 1980 at about 9 00 p m committed the murder of Satish Chandra in the field of Her Singh in village Nagla Bani police station Aliganj district Etah and buried the body in the field and thus offences under Ss 147 148, 302, 149 and 201 I P C were also committed. The dead body was ultimately recovered on 13-3-1981 at the instance of one Ram Prakash Charge-sheets in these Session Trials were submitted on 8-6-1981 1 10-1981 and 1 10 1981 and charges were framed The cases were pending before one of the Sessions Judge at Etah when U P Dacoity Affected Areas Act, 1983 (U P Act No 31 of 1983) came into operation and received the assent of the President Then the Sessions Judge transferred these cases in view of the proviso to S 7(1) of the Act on 6-3-1984 to the Court of the Special Judge (Anti Dacoity) Etah which were received there on 24-3-1984

3 The learned Judge appears to be of the view that these cases could not have been transferred to his Court If this view is accepted then the proviso added to S 7(1) of the Act will become nugatory and meaningless and it clearly lays down that all cases triable by a Special Court under this Act pending before any Court immediately before the date of the commencement of this Act in a dacoity affected area shall stand transferred to the Special Court having jurisdiction over such cases and shall be dealt with and disposed of in accordance with the provisions of this Act

4 In the first sentence of this proviso the words under this Act qualify the term Special Court It is because the Special Courts have been brought into being under S 5 of the U P Act No 31 of 1983 The proviso therefore clearly mentions that if there is a case already pending in the district which is triable by a Special Court and the case is pending since before the commencement of the Act and it is pending in a dacoity affected area, it has to stand transferred to the Special Court having jurisdiction and it has got to be dealt with and disposed of by that Court in accordance with the provisions of that Act There is no ambiguity in this provision of law The reference therefore is of no substance The transfer of all the three cases was justified and in accordance with law

5. The three references are rejected. The Court below shall proceed with the disposal of the three cases expeditiously because much of the time has been lost due to these proceedings.

References ordered accordingly

1986 ALL. L. J 428

H N SETH, Actg C J AND
AMARENDRA NATH VARMA J

Dinesh Kumar Petitioner v Principal, Moti Lal Nehru Medical College Allahabad and another Respondents

Civil Misc Writ Petn No 11903 of 1985
D: 19-11 1985

(A) Constitution of India, Art. 226 — Education — Post Graduate Medical Course — Prohibition for prosecuting simultaneously two courses of studies in different medical colleges — Does not apply when student is prevented from prosecuting studies in one of the Colleges

Where a student though admitted on paper is prevented from prosecuting studies in another medical college whether by authorities themselves or by external force and as a consequence thereto he gives up his studentship in the other Medical College unequivocally it will be wrong to apply the rule prohibiting a student from prosecuting simultaneously two courses of studies in different medical colleges

(Paras 8 10)

(B) U P State Universities Act (President's Act 10 of 1973), S 45(4) — Termination of studentship of student — Sub-s (4) is not exhaustive of contingencies in this respect

Sub-sec (4) of S 45 which provides that a student may be removed for unsatisfactory work or conduct in accordance with the provisions of the Ordinances is not exhaustive of the circumstances and contingencies in which the studentship of a student terminates. The studentship of a student can also come to an end by abandonment which implies that a student may expressly or by some overt act manifest an intention that he does not desire to pursue his studies. There is no express bar in the Act or elsewhere to a student voluntarily giving up his studentship A student may by his conduct indicate that he does not desire to pursue his studies in any university or an institution or college governed by the Act by joining another university or college or taking up an assignment which may exclude the possibility of his prosecuting the studies. The intention of abandonment of studentship may be culled out from various facts and circumstances (Para 11)

Cases Referred	Chronological	Paras
AIR 1985 SC 1059		2
AIR 1984 SC 1420		2
AIR 1984 NOC 119	1983 UPLBEC 119	9
1981 All LJ 1244	1982 UPLBEC 68	9

A N Srivastava for Petitioner Standing Counsel for Respondents

AMARENDRA NATH VARMA, J — The petition is directed against an order dated Aug 13 1985 passed by the Principal of the Moti Lal Nehru Medical College Allahabad cancelling the admission of the petitioner to the Diploma Course in Orthopaedics

2 These are the relevant facts The petitioner did his M B B S Course from the Allahabad Medical College in 1982 After doing internship he joined House Job in Orthopaedics in July 1983 He was an aspirant for admission to the M S Course in the speciality of Orthopaedics against 75% seats which were under the then prevalent rule to be filled up on the basis of institutional preference However in the case of Dr Pradip Jain and others reported in AIR 1984 SC 1420 their Lordships ruled that institutional preference in Post Graduate Courses of study should not exceed 50% This decision affected the chances of admission of the petitioner and four others who approached the Supreme Court by way of a petition which was finally disposed of by a judgment and order dated May 1 1985 (Reported in AIR 1985 SC 1059) where by the State Government was directed to admit the petitioner and the four others in the M. S Course in their respective specialities in the respondent college for the academic session 1985 86 failing which in any of the five other medical colleges Pursuant to this the Director, Medical Education and Training Lucknow passed an order admitting the petitioner to the M S Course in Orthopaedics in the B R D Medical College Gorakhpur In compliance with this order a letter of appointment was issued by the Principal of the BRD Medical College Gorakhpur on July 22, 1985 However when the petitioner went to the Department of Orthopaedics with the letter of appointment a group of hostile students led by the President of the Junior Doctors Association of the BRD Medical

College forcibly took him to the officers hostel and allegedly manhandled him and threw away his belongings from the room where he was staying with a warning that he should leave the Gorakhpur Medical College at the earliest and should give up the idea of pursuing studies there. The petitioner took refuge that night in a hotel in the Gorakhpur city. On July 23, 1985 again when the petitioner went to deposit the fees and join the department a similar treatment was meted out to him. He was again dragged to the officers hostel and was manhandled by the leaders of the students union of the said medical college. He was forcibly boarded in a bus bound for Allahabad and thus the petitioner returned to Allahabad. Hoping that tempers must have cooled down during a week or so since the nightmarish episodes faced by the petitioner he returned to Gorakhpur again on Aug. 2, 1985 and managed to deposit his fees on that date. On Aug. 3, 1985 when he went to the Orthopaedics Department he was again taken to the officers hostel by force and was severely abused and beaten and was confined in the hostel up to 6 P.M. without any food or water. Thereafter he was brought to the Gorakhpur Railway Station and was forcibly boarded in a train bound for Allahabad. By means of a letter dated Aug. 5, 1985 the petitioner brought these facts to the notice of the Head of the Department of Orthopaedics, the Director of Medical Education and the Senior Superintendent of Police and District Magistrate of Gorakhpur but to no avail. The letters went unheeded and no protection was offered to him ? or any assurance given that the petitioner would be permitted to pursue his studies at Gorakhpur.

3. In view of the facts mentioned above the petitioner states, he wrote two letters on Aug. 6, 1985 one to the Principal, Motilal Nehru Medical College and the other to the Principal, BRD Medical College, Gorakhpur saying that in continuation of his letter dated Aug. 6, 1985 he wished to inform that he had no option because of the peril and danger to his life at Gorakhpur but to discontinue his studies in the M.S. Orthopaedics Course at Gorakhpur. He said in this letter "I therefore give up my studies in M.S. Orthopaedics and BRD Medical College, Gorakhpur". He also said in this letter that he had requested the Principal, M. L. B. (N?) Medical College, Allahabad not to send his records to the B. R. D. Medical College, Gorakhpur. To the same effect another letter was written to the Principal, M. L. N. Medical College, Allahabad on Aug. 14, 1985 in response to which the Principal of the M. L. N. Medical College passed the impugned order, the relevant portion of which is quoted hereunder :—

As regards your continuing as Diploma student at M. L. N. Medical College, Allahabad, you cannot simultaneously be a student of two different universities situate at the distance of 200 miles, whereas once you have joined your course at the Medical College, Gorakhpur, you have ceased to be a Diploma student of this medical College.

4. In the counter affidavit the stand taken by the respondent Medical college is that there is a convention prevalent regarding admission to the various State Medical Colleges according to which a student cannot simultaneously pursue studies at two places and when a student leaves one University and joins another he automatically ceases to be student of the former. As regards the difficulties confronting the petitioner at Gorakhpur Medical College all that has been stated in the counter affidavit filed on behalf of the respondent Medical College is that the respondent is not really concerned with that and that the petitioner should approach the State Government and the district officials of Gorakhpur for necessary relief. There is, however, no denial of the facts and incidents stated by the petitioner which compelled him to give up his studentship at the Gorakhpur Medical College.

5. In the rejoinder affidavit apart from reiterating the averments and contentions raised in the original petition the petitioner also states that he had not unequivocally given up his studentship at the Allahabad Medical College before he went to join the M.S. Course at Gorakhpur. He had some course where he would be able to pursue his studies at Gorakhpur and consequently he had taken leave from the Orthopaedics Department Allahabad and was factually on casual leave during the said period i.e. till he returned from Gorakhpur and resumed his studies at Allahabad before the impugned order was passed. In support the petitioner has filed extracts of the attendance register which prima facie seem to support this contention.

6 For the petitioner the first contention raised was that undeniably the impugned order visits the petitioner with civil consequences It deprives him of a very valuable right of prosecuting his studies to the Diploma Course to which he had been validly admitted without affording him any opportunity to show cause why such an order be not (sic) passed against him Having been passed in gross violence of principles of natural justice the impugned order is liable to be quashed quite apart from the fact that it is not sustainable even on merits The second submission was that there is no rule statutory or otherwise which provides for an automatic cessation of studentship by the mere joining of a course of study by a student in another Medical College It was vehemently contended that the Convention which has been talked of in the counter affidavit is non existent and no material whatever has been furnished by the respondents in support of such an alleged convention Alternatively it was urged that the convention cannot affect the statutory rights vested in the petitioner arising from his admission to the Diploma Course at the Allahabad Medical College The third contention raised in support of the petition was that the studentship of the petitioner could come to an end only under and in accordance with S 44(4) of the U P State Universities Act

7 The learned Standing Counsel appearing for the respondents, on the other hand submitted that in view of the fact that the training of post Graduate courses has to be on residency pattern it completely excludes the possibility of a candidate joining a course of studies elsewhere It must follow as a necessary corollary therefore that as soon as the petitioner obtained his admission in the Medical College he ceased to be a student of the Diploma Course at Allahabad Medical College The learned Standing Counsel however fairly conceded that there is no specific rule or order of the Government providing for an automatic cessation of studentship of a candidate joining another Medical College

8 Having heard learned counsel for the parties at some length and given the matter a careful consideration we are clearly of the opinion that the cancellation of the petitioner s admissions is wholly unsustainable in law Apart from the fact that the impugned order visited the petitioner with serious civil consequences and could not hence be passed without affording him an opportunity of being heard in the facts and circumstances of the present case it is clearly established that both legally and factually the studentship of the petitioner at Allahabad Medical College in the Diploma Course did not cease

9 It is not disputed that there is no express rule or order providing for any automatic cessation of studentship by the mere factum of a student joining another Medical College. Learned Standing Counsel very fairly conceded that there is no such rule or order His submission was however based entirely on the regulations framed by the Medical Council of India in regard to the post Graduate Courses of Studies in Medical Colleges including Post Graduate Diploma Course Learned counsel invited our attention to the relevant regulations concerning the nature of training prescribed for Post Graduate Diploma Courses These regulations provide that the candidates pursuing Post Graduate Degree or Diploma Courses should work in the concerned department of the institution for the full period and that the students shall be full time residents. Learned counsel referred us to the two decisions of this Court reported in Dr Rakesh Kumar Gupta v Principal, M L N Medical College Allahabad 1982 U P LBEC 68 (1981 All LJ 1244) and Divyamber Dwivedi v Principal M L N Medical College Allahabad 1983 UP LBEC 199 (AIR 1984 NOC 119) in both of which the nature of training and studies in Post Graduate Degree and Diploma Courses in medical education was examined in depth and it was ruled that the training contemplated for the Post Graduate Courses makes it obligatory for the student to be a full time resident in the college throughout the courses and it does not countenance that the student may be simultaneously serving outside the Medical College The residency pattern of these courses was stressed in both these decisions

10 We have no difficulty in agreeing that having regard to the nature of training and education involved in the pursuit of Post Graduate Medical Education a student cannot simultaneously pursue studies in two medical

colleges. If therefore the petitioner had continued his studies at Gorakhpur he would have had no right to continue his studentship in the Diploma Course at the Allahabad Medical College and the Principal would have been within his rights in taking appropriate action for determining his studentship at Allahabad. However in the facts of the present case it is apparent that the admission of the petitioner in the Gorakhpur Medical College never became effectual and was not translated into reality. It remained a dead letter and a mere paper transaction. The petitioner was physically prevented from pursuing his studies at Gorakhpur. He was bodily removed from the Department of Orthopaedics of Gorakhpur Medical College by the union leaders of that Medical College ganging up against him and making it impossible for him to remain within the precincts of the Gorakhpur Medical College to say nothing about the petitioner's being able to pursue his studies at Gorakhpur. This was so right from the inception of the petitioner's admission. The petitioner complained both to the Head of the Department as well as to the district officials of Gorakhpur and sought their help and intervention but in vain. There was hence little wonder that the petitioner by means of his letters addressed both to the Principal Allahabad Medical College as well as the Gorakhpur Medical College gave up his studentship at Gorakhpur Medical College in no uncertain terms. Faced with the problem which confronted the petitioner no one could have thought of prosecuting his studies at Gorakhpur without the risk and peril to his life. Where, as here a student though admitted on paper is prevented from prosecuting studies in another medical college whether by authorities themselves or by external force and as a consequence thereto he gives up his studentship in the other Medical College unequivocally it will be wrong to apply the rule prohibiting a student from prosecuting simultaneously two courses of studies in different medical colleges. The Principal of the Allahabad Medical College was hence clearly unjustified in cancelling the admission of the petitioner despite the facts and circumstances mentioned above having been brought to his notice.

11. We however do not agree with the learned counsel for the petitioner that S. 45(4) is the only provision or contingency in which the studentship of a student determines. Subsec. (4) of S. 45 which provides that a student may be removed for unsatisfactory work or conduct in accordance with the provisions of the Ordinances is not exhaustive of the circumstances and contingencies in which the studentship of a student terminates. In our opinion the studentship of a student can also come to an end by abandonment which implies that a student may expressly or by some overt act manifest an intention that he does not desire to pursue his studies. There is no express bar in the U. P. State Universities Act or elsewhere to a student voluntarily giving up his studentship. A student may by his conduct indicate that he does not desire to pursue his studies in any university or an institution or college governed by the U. P. State Universities Act by joining another university or college or taking up an assignment which may exclude the possibility of his prosecuting the studies. The intention of abandonment of studentship may be culled out from various facts and circumstances.

12. In the present case however we find that apart from the fact that the petitioner was prevented from prosecuting his studies at the Gorakhpur Medical College rendering his admission there ineffectual and inoperative he had also not completely and irrevocably given up his studentship at the Allahabad Medical College in view of the fact that he had gone on casual leave from the Orthopaedics Department Allahabad Medical College as evidenced by the extracts of the attendance register annexed to the rejoinder affidavit before proceeding to Gorakhpur. He had also requested the Principal of the Allahabad Medical College not to forward his papers to the Gorakhpur Medical College. All these facts point to the conclusion that the petitioner had not intended to give up his studentship at Allahabad and that before his admission to the Gorakhpur Medical College could be translated into reality he came back and resumed his studies at Allahabad. Luckily for him the vacancy caused by the temporary absence of the petitioner from Allahabad had not been filled up so as to make the position irreversible for the petitioner.

13. To sum up our conclusion is that in the facts of the present case, the studentship of the petitioner had not ceased and the Principal of the Gorakhpur Medical College

was not justified in cancelling the petitioner s admission to the Diploma Courses in Orthopaedics

14 In the premise the petition succeeds and is allowed The impugned order dated Aug 13 1985 (Annexure IX to the petition) passed by the Principal of the respondent Medical College is quashed As a consequence the petitioner shall be deemed to be continuing as a student of the Diploma Course in Orthopaedics of the M L N Medical College Allahabad There will be no order as to costs

15 While the judgment was being delivered the learned counsel for the respondents made an oral prayer requesting for a certificate under Art. 133 of the Constitution to the effect that the case involves substantial question of law of general importance which needs to be decided by the Supreme Court Having regard to the nature of the controversy involved in the case we are not satisfied that the case involves any such question The prayer for certificate is accordingly rejected

Petition allowed

1986 ALL. L. J 432

A BANERJI, J

Ashfaq Ali Khan, Petitioner v VIII Additional District Judge Kanpur and others, Respondents

Civil Misc Writ No 589 of 1982 D/ 20-11 1985

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), Ss. 16, 21 — Release of premises — Applicability of Ss 16 and 21 — Application under S 21 by landlord — Relationship of landlord and tenant subsisting when application was made — Application was maintainable.

A perusal of the provisions of Ss. 16 and 21 shows that the landlord has option to make an application under either of these provisions, but there is a distinction. In case there is a sitting tenant and the landlord seeks release of the accommodation then he cannot make an application under S 16 of the Act. In case the tenant has vacated the accommodation and the relationship of landlord and tenant has ceased then in that event an application under S 16 would be appropriate The crux of the matter therefore is what is the stage of relationship between the parties when the application for release is made If there is no subsisting relationship of landlord and tenant between the parties and if the person in occupation is not a tenant or unauthorised occupant, then in that event the landlord can proceed under S 16 by taking the plea that there is a deemed vacancy Similarly where the tenant had shifted from the accommodation taking his bag and baggage, it will also amount to a deemed vacancy (Para 11)

The landlord filed an application under S 21 claiming that the tenant be evicted from the rented premises and the accommodation be released in his favour The landlord claimed that the tenant had shifted to some other city for earning his livelihood and did not need the accommodation Two of the neighbours were allowed to occupy the disputed premises and they paid rent on behalf of the tenant.

Held that the landlord was justified in moving an application under S 21 Had he filed an application under S 16 on account of deemed vacancy it was possible for the tenant to raise a plea that the application was not maintainable as the relationship of landlord and tenant subsisted between the parties. The very fact that rent was being paid to the landlord on behalf of the tenant indicated that the relationship between the parties i e landlord and tenant subsisted. The landlord could not be non suited merely on the ground that he had another remedy under S 16 Case law Discussed (Paras 12 13 14)

Cases Referred	Chronological Paras
(1984) 1 All Rent Cas 479	13
1979 All LJ 1308 1979 (UP) RCC 577	14
1979 All Rent Cas 193	10 13

R H Zaidi for Petitioner S M Abdul Majid and Standing Counsel, for Respondents

ORDER — This writ petition has been filed by a tenant challenging the orders of the Prescribed Authority and the Appellate Authority dated 20-4-1978 and 14-10-1981 (Annexures 3 and 4) respectively Petitioner s

plea, in short, is that the application under S 21(1)(a) of the U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 hereinafter referred to as the Act, was not maintainable and the orders passed in favour of the landlord were bad in law and liable to be set aside

2. This case was listed on the 13th of May 1985 when only learned counsel for the petitioner Mr R. H. Zaidi appeared and none appeared for the respondents on that day Subsequently Mr S A Majid and Mr M C Gupta entered appearance on behalf of the respondents and they have been heard on 4th of Nov 1985

3 One of the respondents Smt. Tameezan Begum is reported to have died on the 5th Feb 1985 and an application was made to make a note that her heirs are already on record as respondents 3 5 and 6 The application under O 22 R 2 of the Code of Civil Procedure was allowed and a note was made that the proposed heirs are already on record

4 A few relevant facts One Dr Mohammed Ilyas was the landlord of house No 88/150 Chaman Ganj Kanpur The petitioner Ashfaq Ali Khan was a tenant thereof. Dr Mohd. Ilyas moved an application under S 21(1)(a) of the Act and prayed for two reliefs viz. that the tenant be evicted from the accommodation in his tenancy and possession and secondly that the same accommodation be released in favour of the petitioner Dr Mohd Ilyas Before the proceedings in the Court of the Prescribed Authority Kanpur had come to an end, Dr Mohd. Ilyas died. His widow Smt Tameezan Begum, his son Akbar Ilyas and two daughters Smt— Zubeda Khatoom and Smt. Jamila Khatoon were substituted as landlords. In paras 10 and 12 of the application under S 21 of the Act, the landlord alleged that the tenant was alone and had been employed in M. A. H. Degree College Ghazipur and had been serving there for the last two years. He had kept the accommodation locked and allowed the adjoining tenant to use it. Further he had shifted completely to Ghazipur and paid rent through S Amjad Ali, Advocate The landlord further alleged that he needed the accommodation for use for himself and his family and son. The landlord was living in a house in Colonel Ganj Kanpur which was inadequate and the house was ill-ventilated and at the end of a long lane His son, a practising Advocate needed accommodation for a good and proper office The landlord stated the number of his family members and needed the accommodation on the above mentioned grounds

5 The written statement of the tenant was a denial of these facts but in regard to his working at Ghazipur there was no denial. He admitted that he was working in Ghazipur but stated that he was not established there In reply to the contents of para 12 of the application it was admitted that rent was paid up to Jan. 1973 by S Amjad Ali who occupied a portion of the house It was denied that the landlord had any genuine need for the accommodation. He was living in his ancestral house which is suitable on all counts, being open to air light, free from dampness and darkness and easily accessible Even for the matter of location for a lawyer that house was suitably located. Lastly it was alleged that the application was moved mala fide with evil intentions

6 The prescribed Authority after considering the respective cases of the parties came to the conclusion that the tenant had admitted that he was not living in the accommodation in dispute since he was employed at Ghazipur The Prescribed Authority further found that no member of the family of the tenant was living in the house In regard to the alternative accommodation offered by the landlord the Prescribed Authority was of the view that since the tenant did not live in Kanpur question of alternative accommodation was not to be considered. He found the requirements of the landlord to be bona fide, genuine and pressing. Consequently he allowed the application by his order dated 20-4-1978

7 On appeal the VIII Addl. District Judge, Kanpur affirmed the findings of the prescribed Authority that the tenant does not reside in the accommodation in suit and does not require the accommodation genuinely for his use and occupation was well founded. On these findings he held that the release of the accommodation in favour of the landlord would cause no hardship to the tenant. On a comparison of

hardship of the parties, the Appellate Authority affirmed the finding of the Prescribed Authority that the landlord would suffer greater hardship and inconvenience in case the application for release was not allowed The appeal was accordingly dismissed by the impugned order dated 14th Oct. 1981

8. There upon the present writ petition was filed. In this petition, Mr R M Zaidi, learned counsel for the petitioner urged that the application under S 21 of the Act was misconceived The landlord should have prayed for release under S 16 of the Act. He referred to paras 10 and 12 of the application for release, wherein the landlord had stated that the petitioner had shifted completely to Ghazipur and one Shri Amjad Ali and his son both of whom were Advocates, were occupying the accommodation in suit Mr Zaidi contended that if the act of the tenant in shifting himself from Kanpur to Ghazipur was a fact then the provisions of S 12 of the Act were attracted and the landlord s remedy lay by way of an application under S 16(1)(b) of the Act. Such an application had to be made before the District Magistrate On this count he urged that the Prescribed Authority and the Appellate Authority erred in allowing the application for release of the accommodation in suit.

9 Admittedly the above contention of Mr Zaidi was not raised before the Prescribed Authority and the Appellate Authority The point has been raised for the first time in this Court. I have heard the learned counsel for the parties on the point.

10. In support of his contention Mr Zaidi relied on a decision of a learned single Judge of this Court in Dr Ashok Kumar v K. C. Panwar 1979 All Rent Cas. 193 In this case, the learned Judge has taken the view that where the vacancy has occurred, the question of release under S 21 did not arise. The facts of that case in brief. Dr Ashok Kumar the petitioner was the landlord of a double storied building. He resided with his family members on the first floor A portion on the ground floor had been let out to an Income-tax Officer The remaining portion of the ground floor was in occupation of the landlord. Respondent K. C. Panwar sent an application to the District Magistrate for allotment of accommodation which was going to be vacated by the Income-tax Officer The respondent s case was that he had been transferred in place of Shri O P Agarwal, the Income-tax Officer On the same day Shri O P Agarwal, the Income-tax Officer also intimated to the District Magistrate about the vacancy The Rent Control and Eviction Officer issued notice to the petitioner Instead of moving an application under S 16(1)(b) the petitioner filed an application under S 21 of the Act The Rent Control & Eviction Officer allowed the application under S 21 in terms of a compromise and released the premises in favour of the petitioner Subsequently the Rent Control & Eviction Officer allotted the premises to K C Panwar The order of allotment however did not give the details of the accommodation which had been let out. The respondent K. C. Panwar made an application for a correction to be made in the allotment order for inclusion of two more rooms. This was allowed by the Rent Control & Eviction Officer and thereafter a writ petition was filed in this Court. The question that arose for decision in the writ petition was about release application under S 21 of the Act. The learned single Judge held that a lawful compromise could be relied on proceeding under S 21 but he held that when the sitting tenant had made an application intimating vacancy and an application for allotment had been made by respondent K C Panwar the Prescribed Authority was not justified in making an order of release under S 21 on the basis of the compromise It was further held that the proceeding taken under S 21 were collusive. The learned single Judge observed

An application under S 21 can be filed against a sitting tenant A case under S. 16 is different than the one covered by S 21 Where, as here vacancy had occurred, the question of making release order under S 21 did not arise. The premises therefore could not have been released. In fact, the application itself was not maintainable and, as such, the order passed thereon was a nullity Accordingly the petitioner cannot succeed on the basis of the release made in proceeding under S 21 "

I have referred to this case in detail, for it would be noticed at once that in the abovementioned case the sitting tenant himself had intimated of the imminence of vacancy He was a public servant and was vacating the premises on the basis of his transfer from the station In such an event there was an

imminence of vacancy This gives jurisdiction to the Rent Control & Eviction Officer to make allotment of the accommodation after notice to the landlord. Consequently in the above case an application under S 21 of the Act for the release of the accommodation on the basis of a compromise between the out going tenant and the landlord could not be deemed to be a lawful compromise and accordingly the release order under S 21 of the Act was rightly set aside

11 A perusal of the provisions of Ss 16 and 21 of the Act shows that the landlord has option to make an application under either of these provisions, but there is a distinction In case there is a sitting tenant and the landlord seeks release of the accommodation then he cannot make an application under S 16 of the Act In case the tenant has vacated the accommodation and the relationship of landlord and tenant has ceased, then in that event an application under S 16 of the Act would be appropriate The crux of the matter therefore is what is the stage of relationship between the parties when the application for release is made If there is no subsisting relationship of landlord and tenant between the parties and if the person in occupation is not a tenant or unauthorised occupant, then in that event the landlord can proceed under S 16 of the Act by taking the plea that there is a deemed vacancy Similarly where the tenant had shifted from the accommodation taking his bag and baggage it will also amount to a deemed vacancy

12. The facts of the present case are slightly different. Although the landlord had claimed in the present case that the tenant had shifted to Ghazipur but he had at the same time stated that he had allowed two of his neighbours to occupy the disputed premises and they had paid rent on behalf of the tenant. The payment of the rent signifies the continuance of tenancy even though the tenant may not be living in the accommodation in dispute, but contents of paras 10 and 12 of the application for release undoubtedly speak about the shifting of the petitioner for earning his livelihood to Ghazipur That apparently has been made to show that the tenant did not need the accommodation. The very fact that rent was being paid to the landlord on behalf of the tenant indicated that the relationship between the parties i.e. landlord and tenant subsisted. In this view of the matter the landlord was justified in moving an application under S 21 of the Act. Had he filed an application under S 16 of the Act on account of deemed vacancy it was possible for the tenant to raise a plea that the application was not maintainable as the relationship of landlord and tenant subsisted between the parties

13 Learned counsel for the respondents referred to a decision reported in ARJ 1984 72 (1984 (1) All Rent Cas 4791 Kumari Sarvesharri IIIrd Addl. District Judge Lucknow In this case the petitioners who were landlords of a residential building made an application under S 21(1)(a) of the Act on the ground that they needed the accommodation for their own The application was opposed by the tenants, but the same was allowed by the Prescribed Authority On appeal, the Appellate Court took the view that the petitioners should have applied under S 16 and not under S 21 of the Act and as such, the appeal was allowed Thereafter the landlords came up to this Court in writ petition under Art 226 of the Constitution. The Appellate Court held that S 16 of the Act was attracted because the petitioners pleaded that the opposite parties were not living in the house for the last several years One was living outside the country and another in Dehradun, and some strangers were living there On this the Appellate Court held that there was a deemed vacancy within the meaning of S 12 of the Act. The learned single Judge however held that this was a case under S 21 of the Act and not under S 16 of the Act He noticed that the case was contested by the tenants before the Prescribed Authority and they had also filed an appeal. It was, therefore not a case where the tenants had admittedly ceased to have any concern with the house The learned single Judge thereafter observed

It was therefore surprising that an argument pressed on behalf of the tenants that the house was vacant in the eye of law should have been accepted by the appellate Court for throwing out the landlords petition under S 21 If the tenants had really ceased to occupy the accommodation and the house was to be deemed to be vacant then they had no locus standi to maintain the appeal and the appeal should have been dismissed on that ground instead of being allowed."

The Court further observed that the tenants

plea which had found favour with the appellate Court was clearly untenable It was further held that even if a tenant inducts some outsiders in a building it would not bar a suit under S 20 on the ground of sub-letting nor an application under S 21 on the ground of balance of hardship at the instance of the landlord It was then observed

It is open to the landlord to pursue either of the remedies and one cannot be defeated merely on the ground that another remedy was also available to him

I am in agreement with the view taken in the above case The facts of the present case show that the tenancy had not come to an end and, as such, an application under S 21 of the Act was maintainable The landlord could not be non suited merely on the ground that he had another remedy under S 16 of the Act The decision in the case of Dr Ashok Kumar v K C Panwar (1979 All Rent Cas 193) (supra) is clearly distinguishable on facts There was a clear finding in that case that there was imminence of vacancy and an application under S 16 of the Act lay in such a case

14 A Division Bench of this Court in Smt. Kanta Devi Jain v Addl District Judge 1979 (U P) RCC 577 (1979 All LJ 1303) held that a landlord can apply both under S 21 or under S 16 of the Act In view of the above I see no merits in the contention of the learned counsel for the petitioner that the application under S 21(1)(a) was not maintainable and that the landlord should have applied under S 16 of the Act As far as the question of the merits is concerned I have heard the learnEd counsel, but I find no error of law to vitiate the findings arrived at by the Prescribed Authority and the Appellate Authority No legal flaw in the findings could be established. In my opinion the application for release under S 21(1) of the Act was maintainable

15 No other point was argued

16 For the reasons mentioned above this petition must fail and is dismissed with costs The petitioner tenant is allowed two months time to vacate the accommodation in dispute

Petition dismissed

1986 ALL L J 436

A N DIKSHITA J

Smt Krishna Devi Petitioner v VI Additional District and Sessions Judge Saharanpur and others Respondents

Civil Misc Writ No 7708 of 1980 D/ 8 11 1985

U.P Urban Buildings (Reg' lation pf Letting, Rent and Eviction) Act (13 of 1972), S 16 – Application for release of premises by landlord — Persons claiming allotment of premises can neither participate in proceedings nor can file objections to application

The matter of release is a matter concerning the District Magistrate alone vis a vis the landlord No other person has been given any such right either to participate in such proceedings or to file objections against it The need of landlord is not liable to be balanced against other claimants The consideration of need would be deemed to be a matter intere se between the landlord and the District Magistrate The District Magistrate has only to be satisfied before releasing the accommodation in favour of the landlord that need is bona fide and genuine Any other person has no right of raising an objection or to participate in the proceedings against the release application or against the order passed by the District Magistrate releasing the accommodation in favour of the landlord Participation invalidates proceedings W P No 7782 of 1982 D/ 3-10-1985 (All) (FB) Foll (Para 9)

Cases Referred Chronologica, Paras

W P No 7782 of 1982 D/ 3-10-1985 (All) (FB) 9

Yatindra Singh for Petitioner Standing Counsel for Respondents

ORDER — By means of this petition under Art 226 of the Constitution of India the petitioner has prayed for quashing the order dated 3-1 1979 passed by the Resident Magistrate Hardwar and the order dated 12 8 1980 passed by the Additional District and Sessions Judge Saharanpur dismissing the revision which have been filed as annexures I and II respectively to this petition

2. In brief the facts are that the petitioner

is the landlady of premises No 316 situate at Jasa Ram Road, Hardwar The ground floor of the said premises comprises of two rooms 1 latrine 1 bathroom, 2 kitchens and one verandah The first floor was constructed sometime in 1976 and was let out to one Ramesh Chandra Goswami in 1977 A room a kitchen and verandah on the ground floor in occupation of Prem Prakash was vacated and released in favour of the petitioner vide order of the Resident Magistrate dated 3-10-1978 Later on another portion on the ground floor in occupation of either Raj Kumar or Prem Prakash was also vacated This portion consisted of one room one small kitchen common latrine and common bathroom

3 Initially a dispute as regards vacancy was raised by the petitioner while a few other persons interested in the allotment of the portion in their favour asserted that the portion had been vacated However the Resident Magistrate declared the portion as vacant The petitioner then applied for the release of the portion in her favour on the ground of her bona fide and genuine need while other persons contested the requirements of the petitioner and were parties to the proceedings in opposing the release application

4 The petitioner had come forward with the case that she was suffering from heart ailment and as per the advice of the doctors she had decided to stay permanently at Hardwar and leave Firozpur where her husband was carrying on business It was also stated that the petitioner was a religious minded lady and wanted to devote the rest of her life at Hardwar which was a sacred place for Hindus A portion on the ground floor having common amenities of bathroom and latrine had already been released in her favour by the Resident Magistrate Hardwar vide his order dated 3 10-1978 As she was a sick lady it was necessary that her son and daughter in-law should also reside at Hardwar to look after her and to provide necessary help and assistance The portion in dispute was thus required genuinely and bona fide for the residence The portion in dispute was thus required genuinely and bona fide for the residence of her son and daughter in law as it was not possible to accommodate them in one room which was in petitioner s occupation This requirement of the petitioner as is manifest from the order of the Resident Magistrate dated 3-1 1979 was disputed and opposed by Ashok Kumar and other persons who participated in the proceedings Even affidavits of other persons were filed by Ashok Kumar and others decrying the need of the petitioner The Resident Magistrate vide his order dated 3-1 1979 rejected the release application and orders for the consideration of the applications for allotment were passed

5 A revision against the order dated 3-1 1979 was preferred to the Court of the District Judge which was transferred to the Court of VI Additional District and Sessions Judge Saharanpur for disposal according to law This revision was also dismissed by respondent No 2 vide his order dated 12 8 1980

6 Feeling aggrieved by the orders dated 8 1 1979 and 12 8-1980 passed by respondents Nos 1 and 2 the instant petition under Art 226 of the Constitution of India has been preferred for quashing the said orders

7 Counsel for the parties have been heard

8 The petitioner had claimed the release of a portion on the ground floor comprising of a room, a small kitchen common latrine and bathroom. This portion has common amenities of bathroom and latrine with the other portion on the ground floor One of the portions on the ground floor had already been released in her favour on 3-10-1978 This portion is in occupation of the petitioner The other portion in dispute which is in front of the portion occupied by the petitioner was sought to be released on the ground that it was required by the petitioner to accommodate her son and daughter in law so that they may be able to look after and assist the petitioner in her ailment. The respondents Nos 1 and 2 did not consider this aspect of the need and instead went to examine the propriety or the truthfulness of her ailment This apparently was wholly erroneous in view of the significant fact that the portion occupied by her already stood released on the ground of her illness and that too a couple of months back Further it may appear to be incomprehensible that the authorities only sometime back adjudged the need of the petitioner to be bona fide and genuine when the petitioner claimed release of a portion on the ground of her intention to stay permanently at Hardwar and more so on

account of her heart ailment. Now when the petitioner is admittedly living at Hardwar on account of her heart illness and intention to stay in the last years of her life her need to keep her son and daughter in law to help and assist her is found to be unreasonable. This does not appear to be convincing. But again this illness seems to have been reassessed. Another aspect which was very material in the circumstances of the case is that the need for accommodating her son and daughter in law had not been adjudged by the respondents and thus they committed a material irregularity and a manifest error of law in deciding the application for release. It has also not to be ignored that the portion on the ground floor has common amenities of latrine and bathroom and inducting a foreigner would certainly be detrimental to the interest of the petitioner. Though this aspect may be examined while allotting the accommodation to some other persons still this fact has not to be lost sight of. If the petitioner abuses the release order there is adequate remedy in the U. P. Urban Buildings (Regulation of Letting Rent & Eviction) Act (Act No. XIII of 1972) to remedy such an abuse. It is amply clear that the need of the petitioner so far as the portion in dispute was required for accommodating her son and daughter in law has not been adjudged thus warranting interference by this Court.

9. Further in the instant case other persons claiming allotment in their favour had opposed the release application on the assertion that the need of the petitioner is neither bona fide nor genuine. Such a participation is not permissible in law as it is a matter between the landlord and the District Magistrate. Catena of decisions are there to support this view. The matter of release is a matter concerning the District Magistrate alone vis a vis the landlord. No other person has been given any such right either to participate in such proceedings or to file objections against it. The need of the landlord is not liable to be balanced against other claimants. The consideration of need would be deemed to be a matter inter se between the landlord and the District Magistrate. The District Magistrate has only to be satisfied before releasing the accommodation in favour of the landlord that need is bona fide and genuine. Any other person has no right of raising an objection or participate in the proceedings against the release application or against the order passed by the District Magistrate releasing the accommodation in favour of the landlord. This view finds support from a Full Bench decision of this Court in Writ Petn. No. 7782 of 1982 Tahib Husain v. Addl. District Judge Nainital, decided on 3-10-1985 of which I was member. In view of the above discussions and also that the respondents failed to consider the need of the petitioner for her son and daughter in law and thus erred in law and committed material irregularity. The petition thus deserves to be allowed and the orders dt. 3-1-1979 and 12-8-1980 passed by respondents Nos. 1 and 2 respectively are liable to be quashed.

10. In the result the petition succeeds and is allowed. The orders dated 3-1-1979 and 12-8-1980 passed by respondents 1 and 2 respectively are quashed. The case is remanded back to the Resident Magistrate Hardwar for considering the release application according to law and in the light of the observations made above. There will be however no order as to costs.

Petition allowed

1986 ALL. L. J. 438

S. D. AGARWALA, J.

Smt. Kiran Devi, Petitioner v. The Fourth Additional District Judge, Etah and another, Respondents.

Civil Misc. Writ Petn. No. 6326 of 1982. D/ 18-10-1985.

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S. 21(1) — Application for release under — Finding of Court on question of suitable alternate accommodation and hardship, erroneous and perverse — Order liable to be quashed.

It is not necessary that in every case there should be equal alternative accommodation available to the tenant and then only the application for release can be allowed. Dearth of space alone cannot possibly be a basis for holding that the alternative accommodation is not suitable. (Para 22)

The landlady filed a release application under S. 21(1)(a) on the ground that she required the accommodation for her husband and son's business of radio sales and service. It was further

AD/CD/A379/86/VAN

alleged that the tenant had also purchased a shop which was in his possession and hence could shift his business without any hardship The tenant s case was that the shop was purchased by his father in favour of his minor sons It was an admitted fact that the landlady s husband and her son had their laboratory in her son s sleeping room in a rented house where they lived Instead of considering the material evidence on record as to whether the place was sufficient for carrying on business or not, the Court below on the very basis held that since the husband and son of landlady were having a laboratory in their house their need was not genuine The landlady by executing a rent note had enhanced the rent of other shop which was let out much earlier to another tenant. The lower appellate Court without considering the material evidence on record held that the landlady let out the other shop to a tenant by executing a rent note when it was not the case of the tenant that the other shop was vacant prior to the execution of the rent note The lower appellate Court also recorded a finding that although the alternative accommodation was available to the tenant he would feel dearth of space as compared to the shop in dispute Relying upon an alleged will it also held that although the shop was lying vacant it could not be made available to the tenant as it belonged to his sons It could be gathered from the evidence that the alternative accommodation was purchased benami by the tenant s father in his sons names.

Held, that the finding of the lower appellate Court was liable to be quashed being vitiated in law and being based on a wholly perverse approach. In the circumstances of the case the matter was remanded to the lower appellate Court for decision after considering the material evidence on record (Paras 22 23)

Cases Referred Chronological Paras

1984 All LJ 256 1984 All Rent Cas 113 18

S C Verama, for Petitioner S N Agarwal, Standing Counsel and Jitendra Nath Singh, for Respondents

ORDER — This is a petition under Art. 226 of the Constitution arising out of proceedings under the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 hereinafter referred to as the Act The property in dispute is a shop situate at Soron Darwaza (Subhash Gate) Mohalla Jai Jai Ram, Kasganj district Etah The petitioner Smt. Kiran Devi is the landlady Shri Bhagwan Saran son of late Lala Madan Mohan Agarwal is the tenant and is respondent No 2 in the petition Respondent No 2 took the shop in dispute on rent by a registered lease deed for a period of 10 years which was to expire on 31 5 1977 Since the tenant did not vacate in spite of expiry of the period of lease the petitioner landlady filed an application on 2 7 1977 for release of the shop in dispute under the provisions of S 21 (1 a) of the Act. The release application was filed on the ground that the petitioner required the accommodation for carrying on the business for her husband and her son It was alleged that the husband and son of the petitioner had acquired necessary qualification training and experience in Wireless and Radio mechanism and they wanted to set up their business of Radio Sales and Service in the disputed accommodation In the petition for release it was further specifically alleged that Bhagwan Saran had purchased a shop No 174 situated in Mohalla Mohan Ward No 3 in the town of Kasganj. This shop was purchased by Bhagwan Saran in the name of his minor sons Anil Kumar and Sunil Kumar It was also alleged that the shop No 174 is in possession of Bhagwan Saran and that he is carrying on business of cloth in the said shop This fact goes to show that the tenant Bhagwan Saran had an alternative accommodation in which he can shift his business without any loss or hardship

2. The tenant contested this application. It was alleged by the tenant that the shop in dispute is not required bona fide by the landlady for setting up her husband and her son in the Radio Sales and Service business. It was further denied that the shop No 174 has not (sic) been purchased by him but the said shop had been purchased by his father Madan Mohan Agarwal in favour of his minor sons Anil Kumar and Sunil Kumar and that in the said shop his father was doing separate cloth business. The tenant further alleged that, in fact, he had separated from the family and that he had nothing to do with his father or his business. It was also alleged that the landlady wanted to get the shop vacated so that she may let it out to some other tenant on higher rent. It was also alleged that the landlady has residential house in her possession at Kasganj and has also large number of properties including the shop at Marher

3 In reply to the contentions raised by the

tenant opposing the release application, it was specifically urged by the petitioner that she had no other shop at Kasganj in which the business of Radio Sales and Service can be established by her husband and son The petitioner's son had received a training and certificate in the year 1975 and thereafter licence was obtained for running the Radio and Electronic Sales and Service shop in May 1976 Since the lease of the disputed shop was to expire in May 1977 she filed (sic) the release of the shop in July 1977

4 It may be stated here that during the pendency of the case before the prescribed authority Madan Mohan Agarwal, father of the tenant Bhagwan Saran died and consequently it was further urged before the prescribed authority by the petitioner that after his death on 3-2 1981 the tenant Bhagwan Saran is the only adult male member in the family The matter was examined by the prescribed authority in detail and by an order dated 30th July 1981 the application of the petitioner was allowed by the prescribed authority The prescribed authority recorded a categorical finding that the petitioner had a bona fide need for the disputed shop to establish her son and husband in the Radio Sales and Service business She has no other accommodation available at Kasganj The tenant Bhagwan Saran had purchased the shop No 174 deliberately in the name of his minor sons so that he may not have to vacate the disputed shop It was further found that the sale consideration for the said shop had been paid by Bhagwan Saran and that it is not established on record that the terms between Bhagwan Saran and his father Madan Mohan Agarwal were not cordial. It was also observed by the prescribed authority that Bhagwan Saran had got the shop No 174 renovated and it is suitable with sufficient accommodation for his business In this view of the matter on a comparison of the need of the landlady qua the tenant, it was found that the need of the landlady was pressing and as such the release application was allowed

5. The judgment of the prescribed authority dt. 30-7 1981 was challenged in appeal under S 22 of the Act The appeal came up for hearing before the IVth Additional District Judge Etah who by his judgment dt 26th April, 1982 set aside the judgment of the prescribed authority and dismissed the application under S 21 of the Act The appellate Court reversed the finding recorded by the prescribed authority and held that the need of the landlady was not bona fide or genuine On the question of hardship the appellate Court recorded a finding that no serious loss was likely to be caused to the petitioner by refusal to grant the release

6 Aggrieved by the decision dt 26-4-1982 the landlady has filed the present petition in this Court.

7 This petition initially came up for hearing before Hon ble B N Sapru J After hearing the learned counsel for some time the Court was of the view that in view of death of Madan Mohan Agarwal on 3-2 1981 the case required further investigation and consequently the case was remitted to the Court below for decision on three issues after giving an opportunity to the parties of leading evidence Three issues remitted to the Court below by order of Hon ble B N Sapru J dt. 23-12 1983 are as follows —

(1) Whether Respondent Bhagwan Saran has inherited proprietary or tenancy rights in shop No 174 Mohalla Mohan Ward No 3 Kasganj consequent upon the death of Madan Mohan?

(2) Whether the sons of Bhagwan Saran are carrying on business in the aforesaid shop or the shop is available to Bhagwan Saran

(3) Whether the aforesaid shop is suitable as an alternative accommodation to Bhagwan Saran?

8 In the order dt. 23-12 1983 it was further observed that it will be open to the appellate authority to make the sons of Bhagwan Saran namely Anil Kumar and Sunil Kumar parties to the proceedings so that they can give their version regarding the shop

9 After the issues were remitted by this Court, the Court below made Anil Kumar and Sunil Kumar sons of Bhagwan Saran as parties to the proceedings. The sons consequently also led evidence in the Court The Court below by an order dt. 21-4-1984 remitted the finding to this Court. It recorded a finding that Madan Mohan Agarwal had executed a will in favour of his grandsons Anil Kumar and Sunil Kumar and as such Bhagwan Saran did not inherit

proprietry rights in the shop No 174 which was the subject matter of the will from his father Shri Madan Mohan Agarwal The issue No 1 consequently was decided in negative

10 So far as the second issue was concerned, it was held that the sons of Bhagwan Saran are not carrying on business in shop No 174 but the shop is also not available to Bhagwan Saran for carrying on the business

11 In regard to the third issue it was held that the shop No 174 is suitable for cloth business It has however much shorter space available in it as compared to the disputed shop In case the shop No 174 is made available to Bhagwan Saran Bhagwan Saran will feel dearth of space as compared to the shop in dispute in running his cloth business in shop No 174

12 After the above mentioned findings were remitted to this Court, the case was again listed before Hon ble B N Sapru J He released the case and thereafter this case was directed to be listed before me

13 I have heard the learned counsel for the parties at length

14 I will now deal with various contentions raised on behalf of the petitioner challenging the findings recorded by the Court below as well as the findings remitted to this Court by judgment dated 21 4-1984

15 The first contention raised by the learned counsel for the petitioner is that the finding recorded by the lower appellate Court that the need of the petitioner cannot be said to be bona fide or genuine is a finding wholly vitiated in law inasmuch as the Court below has not considered the material evidence on the record and has also misread whatever evidence it has considered

16 The first aspect on which the Court below has held against the petitioner is that since petitioner s husband and her son are already having a laboratory in a room in her own house the need of the petitioner is not bona fide or genuine It is not disputed on record that the house in which the laboratory has been installed primarily is not the own house of the petitioner This by itself is a wrong assumption on which the Court below has proceeded The copy of the affidavit filed in support of the release application has been attached as Annexure 1 to the petition In para 22 it was specifically stated by the petitioner that the house in which the laboratory has been fixed primarily was the rented house In the written statement this fact has not been denied It is therefore clear that as stated above the Court below has proceeded on a wrong assumption that the house in which the laboratory had been temporarily located, is the own house of the petitioner It was the own case of the petitioner that her husband and son had set up a laboratory in the sleeping room of the son in the rented house in which they were living Instead of considering the material evidence on record as to whether this place was sufficient for carrying on the business or not the Court below on this very basis has held that since the petitioner s husband and son are having laboratory in the house their need is not genuine This also is a very strange approach In the affidavit filed in support of the release application specific averment has been made that the laboratory had been set up in the bedroom to obtain licence and was not used for doing any business nor actually any business was carried out In the written statement the respondent tenant did not aver that the petitioner s husband and son can carry on business in the house in which the laboratory has been set up neither it was set up that the customers can come there Even without any case having been set up on the part of the tenant, the lower appellate Court simply on the basis that there was a laboratory in the bed-room of the son of the petitioner dismissed the case of the petitioner as being not genuine or bona fide No evidence has been considered which was relevant for coming to this finding and the approach of the appellate Court in this regard is, in my opinion wholly perverse

17 The other circumstance which has been considered in respect of this finding is that the petitioner by a rent note dated 1 7 1976 has let out another shop to one Ram Autar It is not denied that Ram Autar was already a tenant in the shop for a very long time and the only purpose for executing the rent note dt. 1 7 1976 was for enhancing the rent It is not a case where a shop which was lying vacant was let out on 1 7 76 In case the shop was vacant, no doubt it would be a

relevant circumstance that instead of unfusing the shop the petitioner let out the shop to some other person but where the shop was not at all vacant and the agreement is only for the purposes of enhancing the rent it cannot possibly be said that by mere executing a rent note dated 1 7 76 the petitioner s need becomes non genuine or fictitious As is clear from the record the petitioner enhanced the rent as Ram Autar was occupying the shop for a very long time and on the other hand the lease of the shop in favour of the tenant Bhagwan Saran was likely to expire very shortly and it was also clear that Bhagwan Saran had an alternative accommodation where he could run his business The petitioner therefore rightly filed a release application for eviction of the respondent No 2 and only enhanced the rent so far as Ram Autar was concerned The Court below acted illegally and with material irregularity in not considering the material evidence on the record. as stated above in respect of this finding as also misread the relevant evidence just to find that the petitioner s need was not genuine In my opinion, the submission raised by the learned counsel for the petitioner is well founded It is necessary in the interest of justice that the matter should be reconsidered in proper perspective

18 In N S Datta v VIIth Addl Dist Judge Allahabad 1984 All Rent Cas 113 (1984 All LJ 256) this Court took the view that if a person makes a stop-gap arrangement in the absence of his being able to carry on the business properly this fact is of no consequence Merely because the petitioner s son opened a laboratory in his own bedroom for the purposes of obtaining a licence to equip himself to carry on the business of Radio Sales and Service it would be unfair to hold that his requirement is no longer there and that the need is not bona fide In fact this circumstance would on the other hand show that there was a genuine effort on the part of the son of the petitioner in opening a laboratory in the bedroom so that he may complete all the process which is required for the purposes of carrying on regular business in a proper accommodation As stated above the approach of the lower appellate Court in regard to this finding is wholly a perverse approach

19 Learned counsel for the petitioner has further challenged the finding recorded by the Court below that greater hardship will be caused to the respondent No 2 in case the application for release is allowed The case of the petitioner is that respondent No 2 has an alternative shop No 174 situated in Mohalla Mohan Ward No 3 in the town of Kasganj This shop was purchased benami by Bhagwan Saran in the name of his minor sons After the death of Madan Mohan Agarwal father of Bhagwan Saran the shop which is very near to the shop in question is lying vacant and is available with the respondent No 2 and hence the question of hardship to the respondent No 2 does not arise

20 I have examined the finding given by the lower appellate Court in the judgment dt 26 4-1982 in regard to the availability of the shop No 174 This finding is vitiated in law I have also examined the findings recorded by the judgment dt 21 4-1984 which were remitted to this Court In my opinion these findings are also vitiated in law They are based on a wholly perverse approach In fact, this is one of those cases where if the facts are seen in the proper perspective it would be discovered that the tenant is a very clever person and he has made out one circumstance after another and has got written documents with a view to deprive the petitioner of the shop in dispute The conduct of the respondent No 2 shows how a person can take undue advantage of the provisions of an Act which had been promulgated with the object of regulating the eviction of tenants in the interest of general public The Act did not contemplate to protect dishonest tenants

21 It is not disputed that the property was taken by the respondent No 2 from the petitioner by a lease deed for a period of ten years The term of the lease was to expire in May 1977 On 3rd Dec 1965 (1975?) nearly about year an half before the expiry of the said lease a registered partition deed was got executed between the father and son, namely Madan Mohan Agarwal and Bhagwan Saran and his wife Smt Radha Devi In this partition as I find nothing was to be partitioned The only purpose of executing this partition deed was to state therein that the relations of the father with the son were not cordial After this partition deed was executed on 25th Feb 1976 shop No 174 was purchased in the name

of Anil Kumar and Sunil Kumar the minor sons of Bhagwan Saran The vendor of shop No 174 filed an affidavit clearly stating therein that the consideration for sale of shop No 174 was paid by Bhagwan Saran The partition deed as well as the sale-deed were executed by Bhagwan Saran so that the petitioner in any subsequent litigation could not urge that Bhagwan Saran had an alternative shop It has further come in evidence that after the purchase of the said shop it was renovated and the shop now stands reconstructed No business is being carried on by anybody there The sons Anil Kumar and Sunil Kumar are also are not carrying on their business In spite of this finding it is not conceivable how the Court below has recorded a finding that on a comparison of the hardship of the landlord and tenant, the hardship of the tenant Bhagwan Saran would be greater

22 It is very interesting to note that when the matter was remitted by this Court and Anil Kumar and Sunil Kumar were made parties to these proceedings, they conceded that the property was purchased benami Yet the Court below in his judgment dt 21-4-1984 stated that the affidavit of vendor was of no value and recorded a finding that Madan Mohan Agarwal became the owner of the property in dispute It is pertinent to note at this stage that the tenant did not stop his hand by not creating other documents to disassociate himself from the shop No 174 He after the death of his father Madan Mohan Agarwal produced a will alleged to have been executed by Madan Mohan Agarwal, his father which was not registered and neither signed by Madan Mohan Agarwal. Only thumb impressions were alleged to be there on the alleged will and this was produced to show that after the death of Madan Mohan Agarwal, the rights in the shop went to his sons, Anil Kumar and Sunil Kumar The Court below in its judgment dated 21-4 1984 held that the will is not beyond suspicion Yet the Court below acted illegally and with material irregularity in the exercise of his jurisdiction in finding against the petitioner relying ultimately on the will. It has further found that the shop is not available with Bhagwan Saran A further finding has been recorded by the Court below that in case shop No 174 is made available to Shri Bhagwan Saran Shri Bhagwan Saran will feel dearth of space as compared to the present shop These findings are also in my opinion vitiated, as they are self contradictory The lower appellate Court had found categorically that the shop was lying vacant but merely because technically the shop belongs to Anil Kumar and Sunil Kumar therefore it held that the shop was not available to Bhagwan Saran There is no evidence on record that the relations between Bhagwan Saran and his sons are strained This finding also in the judgment dated 21-4-1984 in my opinion is clearly vitiated in law It is not necessary that in every case there should be equal alternative accommodation available then only the application for release can be allowed. Dearth of space alone cannot possibly be a basis for holding that the alternative accommodation is not suitable The approach in regard to this finding is also erroneous

23 From an overall reading of the judgment dt 21-4-1984 it is clear that the shop No 174 is lying vacant It has been reconstructed It has been purchased in the names of the sons of Bhagwan Saran benami and it is situated near the shop in dispute These are relevant facts which will have a bearing on the finding in regard to hardship I am definitely of the opinion, that the approach of the Court below in recording a finding in regard to the question of hardship is wholly erroneous and perverse and the entire case in regard to this question needs re-examination by the Court below again in the right perspective after considering the facts and circumstances of the case The submission made by the learned counsel for the petitioner has substance

24. In the result, I allow the petition, quash the judgment of the lower appellate Court dt 26-4-1982 and 21-4-1984 The entire case is remanded to the lower appellate Court for decision afresh after considering the entire material evidence on record. The application for release was filed in 1977 Eight years have already elapsed. The husband and son of the petitioner are aging and in order to do justice to the cause it is necessary that this matter may be taken at top priority and be disposed of very expeditiously I accordingly direct the lower appellate Court to dispose of the appeal within three months from the date of the certified copy of this judgment is filed before the appellate Court. The petitioner shall be

entitled to her costs from the respondent No 2

Petition allowed

1986 ALL L J 444

A N DIKSHITA, J

Smt Bismillah Begum and others Petitioners v IV Addl. Dist. & Sessions Judge Moradabad and others Opposite Parties

Civil Misc Writ Petn No 1253 of 1980 D/ 8-10-1985

(A) U P (Temporary) Control of Rent and Eviction Act (1947), S 7C(1), (2), (6) — Deposit of rent under — Notice of demand received back with remark 'refused' — Tenant depositing rent under S 7C(2) instead of paying it to landlord — There is no payment to landlord within postulates of S 7C(6) — Tenant would be deemed to be a defaulter and liable to ejectment.

Where the tenant would be deemed to be aware about contents of notice wherein the rent was demanded and it was made clear that the party issuing notice was sole owner of premises when the notice was received back with the remark refused and the tenant still to frustrate the payment of rent to landlord deposited rent under S 7C(2) it could not be deemed that payment had been made to landlord within postulates of S 7C(6) Once the demand had been made it clearly signified the intention of landlord to accept rent and a deposit under S 7C of Act thereafter would not protect the tenant 1972 All LJ 420 Rel on (Para 8)

(B) Evidence Act (1872), S 114 — Notice of demand and ejectment sent on behalf of landlord received back with the remark refused — It would be deemed that tenant knew about contents of notice and it was not for landlord to have proved the same Case law discussed (Para 5)

Cases Referred Chronological	Paras
1972 All LJ 420 AIR 1972 All 441	7 8
AIR 1971 All 372	6
1970 All LJ 336 AIR 1970 All 446 (FB)	5 6
AIR 1964 All 52	5
AIR 1963 SC 468	4

M A Qadeer for Petitioners Haji Iqbal Ahmad, A N Bhargava and Standing Counsel, for Opposite Parties

ORDER — The instant petition under Art 226 of the Constitution has been filed by the petitioners praying for issuing a writ of certiorari for quashing the judgment and order dated 19 11 1973 (Annexure 1 to the petition) and judgment and order dated 6 8 1974 (Annexure 2 to the petition) passed by respondents Nos 2 and 1 respectively

2 The facts in brief giving rise to this petition are The petitioners filed a suit in the Court of Judge Small Causes Moradabad for the recovery of arrears of rent as well as ejectment of respondents Nos 3 to 5 on the allegations that the defendants being tenants of the shop in dispute at the rate of Rs 7/ per month had failed to pay the rent since 15 6 1966 and thus committed default in the payment of rent and were liable to ejectment The plaintiffs (petitioners) alleged that one Nazir Husain was the tenant of the plaintiffs and Ahmad Husain respondent No 5 had no concern with the shop in dispute though as a measure of abundant caution notice was addressed to both of them The defendants contested the suit and Nazir Husain alleged in his written statement filed on 1 12 1969 that Ahmad Husain was also a joint tenant of the shop in dispute and thus the notice served upon Nazir Husain alone was invalid In view of the allegations in the written statement by an amendment Ahmad Husain was also impleaded in the suit as defendant No 2 The trial Court dismissed the suit on the ground that as notice was not served on Ahmad Husain and only on Nazir Husain hence the suit for want of notice was not maintainable The trial Court apparently was swayed by the alleged interpolations in the notice by the inclusion of the name of Ahmad Husain therein The trial Court thus recorded a finding that the notice was not served on defendant No 2 Ahmad Husain (respondent No 5) In regard to the arrears of rent the trial Court came to the conclusion that in view of the deposit having been made under S 7C of the U P (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter called the Act) the tenant was not a defaulter in the payment of rent In view of the findings that the notice

was illegal as well as the tenant was not a defaulter in the payment of rent. it having been deposited under S 7C of the Act the suit was dismissed. Aggrieved by the judgment and order dated 19 11 1973 dismissing the suit of the petitioners a revision was preferred to the Court of the District Judge Moradabad which was transferred to the Court of 4th Additional District Judge Moradabad respondent No 1 for disposal according to law The respondent No 1 came to the conclusion that the notice would be deemed to have been served on Ahmad Husain defendant No 2 (respondent No 5) but in view of the deposit having been made under S 7C of the Act the defendants were not defaulters within the meaning of S 3(1)(a) of the Act The respondent No 1 thus dismissed the revision with the observation that as the rent had been deposited in Court the plaintiffs could withdraw it It might be stated here that the respondent No 1 committed a manifest error of law in holding that in view of the deposit having been made under S 7C(2) of the Act the plaintiffs could withdraw it The revisional Court failed to appreciate that the amount could not be withdrawn until the controversy as to who was entitled to receive the same was resolved Aggrieved by the judgments and orders of the respondents Nos. 2 and 1 the petitioners have filed the present petition under Art 226 of the Constitution

3 The controversy in a narrow compass would lie as to whether the contesting respondents in view of the deposit having been made under S 7C of the Act would be absolved of their liability to ejectment Learned counsel for the parties have made their submissions in detail

4 The petitioners had sent a notice dated 29-4-1969 of demand and ejectment which came back with the remark refused The remark of refusal is dated 3-5-1969 and would mean that the notice of demand was served on Nazir Husain on 3-5-1969 Earlher the shop in dispute was owned by the petitioners as well as Smt Bashiran and Munna Jan Half of the rent amounting to Rs 7/ was paid to the petitioners and the other half namely Rs. 7/ to Smt. Bashiran and Munna Jan Consequent to the passing of a partition decree in suit No 85 of 1968 the entire shop came to the share of the petitioners. The final partition decree was passed on 9-3-1968. In February 1969 Nazir Husain and Ahmad Husain remitted Rs 136/ to Smt Bismillah (petitioner No 1) as her share of the rent but the money order was allegedly refused and the rent was not accepted After the lapse of a few months on 16-5-1969 Nazir Husain and Ahmad Husain sent a registered notice to the petitioner and also to Smt. Bashiran and Munna Jan enquiring about the rent due from them and also as to whom it should be paid in view of the non acceptance of the rent which was remitted by Money Order This notice dated 16-5-1969 sent by Nazir Husain and Ahmad Husain was duly replied by the petitioners through their counsel on 22-5-1969 However Smt. Bashiran and Munna Jan did not reply to the notice dated 16-5-1969 On behalf of the petitioners while replying to the notice dated 16-5-1969 it was informed that the petitioners in view of a partition decree having been passed had become the sole owner of the shop in dispute This reply further stated that the notice of demand and ejectment sent on behalf of the petitioners had been received back with the remark refused On receiving such a reply instead of tendering the amount to the petitioners as demanded vide notice dated 29-4-1969 Nazir Hussain and Ahmad Husain filed an application under S 7C of the Act in the Court of Munsif Moradabad depositing Rs 273/ on 2-6-1969 Objection against this application under S 7C of the Act was filed by the petitioners However the Munsif Moradabad, allowed Nazir Husam and Ahmad Husain to deposit the rent at their own risk without prejudice to the rights of the parties. It significantly emerges from the evidence on record that Nazir Husain and Ahmad Husain were aware about the notice dated 29-4-1969 sent to them on which the remark of refusal was made However the rent was deposited on the last day i e on 2-6-1969 when the stipulated period after the service of notice was expiring Another significant fact which attracts attention is that in spite of the notice dated 22 5-1969 sent on behalf of the petitioner No 1 Smt Bismillah stating therein that she had become the sole owner of the shop in dispute and in view of the demand having been made in the notice dated 29-4-1969 rent was deposited on 2-6-1969 by Nazir Husain and Ahmad Husain. No doubt Smt. Bashiran and Munna Jan had not replied to the notice dated 16-5-1969 sent by Nazir Husain and

Ahmad Husain, but that alone would not entitle Nazir Husain and Ahmad Husain to deposit the amount under S 7C(2) of the Act when it was categorically informed on behalf of the petitioner No 1 that she had become the sole owner of the shop in dispute in view of the partition decree having been passed Both the Courts below failed to consider that after the notice dated 29 4-1969 was served on Nazir Husain on 3-5-1969 demanding the rent, it was not permissible for the tenants to have deposited the rent under S 7C(2) of the Act The petitioner No 1 had clearly made her intention to accept the rent It would be necessary to extract the provisions of S 7C(1) and S 7C(2) as well as section 7C(6) of the Act which are reproduced below

7C(1) When a landlord refused to accept any rent lawfully paid to him by a tenant in respect of any accommodation the tenant may in the prescribed manner deposit such rent and continue to deposit any subsequent rent which becomes due in respect of such accommodation unless the landlord in the meantime signifies by notice in writing to tenant his willingness to accept. —

7C(2) Where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent referred to in sub-section (1) in respect of any accommodation the tenant may similarly deposit the rent stating the circumstances under which such deposit is made and may until such doubt has been removed or such dispute has been settled by the decision of any competent Court or by settlement between the parties continue to deposit in like manner the rent that may subsequently become due in respect of such building

7C(6) In any case where a deposit has been made as aforesaid it shall be deemed that the rent has been duly paid by the tenant to the landlord

Both the Courts below have found that the notice dated 29-4-1969 was served on 3-5 1969 The trial Court however held the notice to be illegal on the assumption that it had not been served on Ahmad Husain who was a joint tenant but this finding was reversed by respondent No 1 in view of the law laid down by the Supreme Court in the case of Khanji Manji v Trustees of the Port of Bombay AIR 1961 SC 468 The notice on the basis of the above view was found to be a valid one There is also no denial that the notice was served on Nazir Husain on 3-5 1969

5 In the case of Ganga Ram v Smt Phulwati 1970 All LJ 336 (AIR 1970 All 446) a Full Bench of this Court took the view that where a notice was sent by registered post and came back with the endorsement refused made by the postal authorities the mere endorsement is sufficient in the eye of law to justify the presumption of service of notice on the addressee The notice of demand dated 29 4 1969 was thus duly served on Nazir Husain on 3 5 1969 Having regard to the fact that the notice was served on 3-5 1969 it would be deemed that the contents of the notice and not the envelope alone were served on Nazir Husain Such a view finds support by the observations made in the case of Shri Nath v Smt Saraswati Devi AIR 1964 All 52 In that case Mr Justice S D Singh made the following observations

Where a closed envelope is tendered to a person and he refused to accept delivery of the same he of course has no knowledge of the contents of that envelope but when he does not care to accept delivery of the envelope the law should impute knowledge of the contents thereof to him, and it is on that basis that refusal to accept delivery of a registered or unregistered notice is regarded as sufficient notice of the contents of the envelope to the addressee

It would thus be deemed that Nazir Husain knew about the contents of the notice and it was not for the petitioners to have proved the same

6 In the case of Amina Khatoon v Zohra Bibi, AIR 1971 All 372 it was held as under

It was not the duty of the landlord to prove that the tenant after having received notice had actually read it and understood its contents

In both the cases, Ganga Ram v Smt. Phulwati and Amina Khatoon v Zohra Bibi (supra) service of notice was by refusal

7 In the case of Mohammadoo Khan v Haji Ghulam Rasul, 1972 All LJ 420 (AIR 1972 All 441) Mr Justice N D Ojha took a similar view with which I respectfully agree It was held in this case as under

that when the refusal of a notice sent by registered post amounts to service of the notice it means service of the contents of the notice and not the envelope containing it and once it is held that the contents of the notice came within the knowledge of the appellant there is no escape from the conclusion that the appellant knew that the notice had been sent by his landlord making a demand of the arrears of rent.

8 From the above discussion it is manifestly clear that Nazir Husain was aware about the contents of the notice dated 29 4 1969 wherein the rent was demanded failing which he would be deemed to be a defaulter within the meaning of S 3(1)(a) of the Act and liable to ejectment. Further the petitioners while replying to the notice dated 16-5-1969 on 22 5-1969 had succinctly mentioned that Smt. Bismillah Begam was the sole owner and also specifically mentioning about the sending of the notice dated 29-4-1969 which came back with the endorsement refused' Still Nazir Husain chose to frustrate the payment of rent to Smt. Bismillah Begam, petitioner No 1 by depositing the same under S 7C(2) of the Act The deposit of rent under S 7C can be made only in two circumstances firstly when a landlord refuses to accept rent lawfully paid to him by a tenant in respect of the portion let out to him as enjoined in S 7C(1) and secondly where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent referred to in sub-section (2) of S 7C in respect of such accommodation On depositing the rent under S 7C(2) of the Act by Nazir Husain the Munsif Moradabad ordered that the applicants were permitted to deposit the rent at their own risk without prejudice to the rights of the parties The respondent No 1 took the view that in view of the deposit having been made on 2-6-1969 the arrears of rent claimed by means of the notice of demand would be deemed to have been paid to the landlord in view of the provisions contained in sub-section (6) of S 7C No doubt Nazir Husain had tendered the rent through money order some time in February 1969 which was allegedly refused by petitioner No 1 but no deposit under S 7C was then made and meanwhile the notice dated 29-4-1969 was sent signifying willingness to accept the rent. However there is nothing on record to show that the landlord ever refused to accept the rent Once the demand had been made it clearly signified the intention of the landlord to accept the rent and a deposit under S 7C of the Act thereafter would not protect the tenant. In the instant case the deposit had been made under S 7C(2) of the Act and as such it cannot be deemed that the payment had been made to the landlord within the postulates of S 7C(6) of the Act An identical controversy arose in the case of Mohammadoo Khan v Haji Ghulam Rasul (supra) where it was held that once a notice in writing demanding the rent due had been sent it signified the willingness of the landlord to accept the rent from the tenant. It was thus held

The notice of demand dated June 5 1963 served on the appellant on June 12 1963 was a notice in writing and signified the willingness of the landlord to accept rent from the tenant In this view of the matter neither of the two ingredients of section 7C which could entitle the tenant to make a deposit under the said section were present after June 12 1963 and the deposit made under the said section on July 11 1963 could not save the appellant from being defaulter in the payment of rent "

9 In view of the discussions above both the Courts below materially erred in the appreciation of law and committed a manifest error of law inviting interference by this Court under Art 226 of the Constitution and their orders are liable to be quashed The suit of the plaintiffs is thus liable to be decreed with costs throughout

10 In the result the petition succeeds and is hereby allowed with costs. The judgments and orders dated 6-8-1974 and 19-11 1973 passed by respondents Nos 1 and 2 respectively are quashed The suit of the petitioner for recovery of arrears of rent and ejectment of respondents Nos. 3 to 5 stands decreed with costs. The said respondents are however allowed one month s time from today to vacate the accommodation in dispute failing which they shall be liable to be evicted through the process of law

Petition allowed.

1986 ALL. L J 448

N N SHARMA, J

Ram Pyare Bajpai. Appellant v Mukandi Lal Garg and others. Respondents

Second Appeal No 2112 of 1974 D/ 19-9 1985

(A) Civil P C (5 of 1908), S 100 — Finding of fact — Interference in second appeal — Courts holding that A was entitled to file suit on behalf of trust and B was in permissive possession of trust property — It being a finding of fact, interference in second appeal is unwarranted (Paras 17, 20)

(B) U P (Temporary) Accommodation Requisition Act (25 of 1947), S. 3 — Requisition of property — Effect — Trust filing suit against opposite party for eviction — Opposite party contending that property was requisitioned by State — No issue drawn as to whether property was with State at the time of proceedings — Property though requisitioned belongs to trust and does not vest in State — Trust entitled to maintain action AIR 1984 SC 866, 1955 All LJ 1, Rel on (Paras 23, 25)

Cases Referred	Chronological	Paras
AIR 1984 SC 866		22
AIR 1956 SC 382	1956 All WR (SC) 373	20
1955 All LJ 1 (FB)		24
AIR 1953 All 449		20

R P Tripathi and Ravi Kant, for Petitioner Rakesh Bahadur and S N Verma, for Respondents

JUDGMENT — This is a defendant s appeal directed against judgment and decree dated 25-7 1974 by Sri S B L Kakkar learned IIIrd Additional District Judge Kanpur who dismissed Civil Appeal No 56 of 1972 with costs and affirmed the judgment and decree dated 13-12 1971 drawn by Sri J M. Srivastava, the then learned Civil Judge, Kanpur in original Suit No 84 of 1964 who had decreed the suit of plaintiffs respondents for possession over the disputed premises and for recovery of Rs. 1800/ as mesne profits and for pendente lite and future mesne profits at the rate of Rs. 50/ per month.

2. The dispute relates to a portion of premises No. 96/6 Mahatma Gandhi Marg, The Mall, Kanpur as detailed at the foot of the plaint

3 Plaintiffs were Sah Madan Mohan Mukandi Lal Garg in their capacity as trustee and managing trustee respectively of plaintiff No 3 Lala Chhedilal Trust.

4 Contesting defendant is appellant Sri Ram Pyare Bajpai while defendant No 2 was Sri Deo Dutta Mishra and defendant No 3 P D Agarwal was a pro forma defendant as one of the trustees of aforesaid trust

5 Plaintiffs case was that the entire premises No 96/6 was commonly known as Chandrika Prasad Bagh. It consisted of several residential units. This entire property originally belonged to Lala Chhedi Lal Agarwal who created the aforesaid trust under the will executed on 12-4-1917 and registered on 13-4-1917

6 In the aforesaid premises one Kothi is known as Bari Kothi and the other as Chhoti Kothi.

7 It was expressly provided that Chandrika Prasad Bagh was to be utilised by the general Hindu public as a Health Resort and the said two Kothies may also be used for marriages and other important functions of the Hindus but no individual or group of individuals should be allowed to use or occupy it for more than three days in continuation These Kothies were not meant for letting out

8 It was further averred that during the Second World War the district authorities passed an order asking the Trustees of the trust to let out the Bari Kothi on rent It was allotted to Sri Bal Mukund Sharma, the then Deputy Superintendent of Police and thereafter to Sri D D Sharma, Central Excise Inspector Subsequently defendant No 2 Sri Deo Dutta Misra, a Member of the Legislative Assembly became the tenant of the entire Bari Kothi on behalf of trust on a monthly rent of Rs. 50/ During the tenure of Sri Deo Dutt Misra, Sri Ram Pyare appellant occupied the disputed premises as detailed at the foot of the plaint. This occupation was done by him in 1954 through Sri Deo Dutta Misra. It was further alleged by plaintiffs that Sri Deo Dutta Misra abandoned his tenancy in the year 1961 and Smt. Kamla Kumari, wife of Sri Chhatra Sal Singh, who was then posted as Civil Judge Kanpur got the portion, which was previously in the occupation of Sri Deo

Dutt Misra allotted in her favour However defendant No 1 Ram Pyare continued to occupy the portion during this period

9 Plaintiffs requested defendant No 1 to vacate the premises but on the request of Ram Pyare this permissive occupation was allowed for a period of six months more on account of the marriage of his daughter However he did not vacate the premises as promised by him, despite the marriage of his daughter in April 1961 and thus the permission granted to him stood automatically revoked.

10 Plaintiffs repeatedly asked defendant No 1 to vacate the premises They also served a notice dated 3-4-1964 upon Ram Pyare defendant No 1 calling upon him to vacate and deliver possession of the accommodation Ram Pyare gave an evasive reply He was served with another notice dated 13-4-1964 through his counsel asking him to vacate the premises and to pay mesne profits at the rate of Rs 50/- per month from 11 7 1961 On receipt of this notice defendant No 1 Ram Pyare had a talk with the trustees and offered to pay rent and wanted that his occupation should be treated as a tenant However plaintiffs did not agree to it. Defendant felt annoyed On 2 5-1964 he sent a wrong notice in reply alleging that he was the proprietor and owner of the disputed accommodation Hence the present suit had been filed by plaintiffs on 11 8-1964

11 Defendant No 1 Ram Pyare denied that he was in permissive occupation of the disputed premises He also denied that Sri Deo Dutt Misra was the tenant of the entire building known as Bari Kothi According to him Sri Deo Dutt Misra occupied only a portion of Bari Kothi and the remaining portion of the Kothi was in possession of defendant No 1 Ram Pyare even prior to the occupation by Deo Dutt Misra in Bari Kothi He also denied that he occupied the premises in 1954 According to him he was in possession from before He also denied the allegation of plaintiffs that he requested them to permit his occupation for six months more on the pretext of the marriage of his daughter He also challenged the right of plaintiffs 1 and 2 to file the suit pending the disposal of Civil Appeal No 208 of 1960 in this Court about the Trust. Other pleas were also raised which are not necessary to be detailed for the disposal of this appeal

12 Both the Courts below found that possession of defendant appellant over the disputed premises was permissive and not adverse They further found that possession of contesting defendant commenced in 1954 and not prior thereto As the suit was filed in 1964 so there was no question of the suit being barred by time They further found that the suit was not liable to be stayed they further held that Mukandi Lal Garg was well entitled to institute the suit In the result, the claim was decreed as given above

13. I have heard learned counsel for parties at length and perused the record

14 On behalf of appellant, it was strenuously argued before me that possession of contesting defendant was not permissive but adverse it did not commence from 1954 but prior thereto the Courts below misread the evidence and wrongly held that the possession of defendant No 1 was simply permissive and commenced from 1954

15. Both the Courts below have scrutinised the statements of Mukundilal Garg (P W 1) and Ram Pyare (D W 1) and they stigmatised Ram Pyare as unreliable In this connection, they referred to the shifting stand of defendant No 1 Ram Pyare In his written statement, defendant No 1 did not mention the date of commencement of his occupation In his statement under O X R 2 Code of Civil Procedure he disclosed that he occupied the premises in 1950 and subsequently through an amendment in his written statement it was pleaded that he occupied the premises from Sept 1951 On the other hand, the case of the plaintiffs on this point was consistent throughout. I find that the Courts below gave good reasons for believing the testimony of plaintiff Mukundi Lal Garg (P W 1) Moreover there is nothing on record to show that possession of defendant No 1 was adverse. He conceded that house and water taxes had to be paid by the owner in Kanpur and he was well aware of that obligation He never paid any water or house tax during his occupation

16. Defendant No 1 Ram Pyare further conceded in his cross-examination that he did not know the actual owner of the property He again conceded that the disputed accommodation belongs to Chhedi Lal Trust and he learnt this fact from one Munni Lal who was a trustee of the said trust. When he

entered possession over the disputed premises. he had an intention to pay the rent also Mukandi Lal (P W 1) testified that after a letter has been issued to defendant No 1 in 1961 defendant approached him and so Madan Mohan permitted his occupation for six months more till the marriage of his daughter was performed That marriage was performed in April 1961

17 So the aforesaid concurrent findings of fact does not suffer from any infirmity and are thus confirmed

18. The next contention was that there is documentary evidence on record to show that Mukandi Lal Garg was not legally appointed trustee of the aforesaid Trust and so the plaintiffs could not maintain the suit

19 It is correct that plaintiffs did not file any documentary evidence to show that Sri Mukandi Lal as de facto trustee of the aforesaid Trust, had collected rent or paid house tax etc

20 Learned Courts below found the testimony of Mukandi Lal reliable on the point that as de facto trustee he was managing the trust property Mukandi Lal and others had filed a suit against a tenant Parmanand in respect of the house in Bengali Mohal claiming themselves to be trustees of Chhedi Lal Trust and the courts below referred to the judgment (Ext 9) in Appeal No 549 of 1960 on the point that Mukandi Lal and others were the trustees and had right to sue It is correct that it has been held in Suit No 22/57 between Sri Krishan and others and Shah Madan Mohan and others under S 92 of Code of Civil Procedure vide Ext A4 copy of plaint copy of the written statement Ext. A5 and copy of judgment Ext A1 that Mukandi Lal and others were not duly appointed trustees but it did not debar a de facto trustee from bringing an action in name of Trust for ejectment of a trespasser or licensee from the trust property vide Vikarama Das Mahant v Daulat Ram Asthana, 1956 All WR (SC) 373 (AIR 1956 SC 382) Such decree would be in favour and for the benefit of Trust A similar view was held in Lalta Prasad v Brahma Nand AIR 1953 All 449 relied upon by the Courts below It was open to the Courts below to have believed the oral statement of P W 1 and to have discarded the statement of D W 1 for which good reasons were recorded by them I have given above names of all the plaintiffs. Under such circumstances the aforesaid concurrent finding of fact by the Courts below cannot be faulted

21 Learned Advocate for appellant next argued that P W 1 Mukandi Lal in his examination in chief conceded that during the second World War this Kothi was requisitioned by the State for occupation by Deputy Superintendent of Police Sri Bal Mukund Sharma and thus Sri Bal Mukund Sharma became the first tenant in this Kothi. In cross examination he conceded that it was never derequisitioned On the basis of this statement through an application dated 7 2 1973 defendant appellant sought an amendment to the effect that since the property in suit has been requisitioned by the State and the same was not released so far plaintiffs were not entitled to file and maintain the suit against the defendants and the same was liable to be dismissed No oral or documentary evidence was adduced in support of this application by defendant. This application was opposed by plaintiffs respondents It was also disposed of by learned appellate Court by the judgment and aforesaid contention was repelled

22. Learned Advocate for appellant argued that in a petition dated 12-4-1947 written by Shah Shree Krishan Das in his capacity as President of Lala Chhedi Lal Trust, addressed to the District Magistrate Kanpur was a prayer that the property be not allotted to anybody this petition is also indicative of the fact that this Kothi had been requisitioned by the District Magistrate during the IInd World War and thus the present suit was not maintainable as the title and possession of the Kothi vested in the State In this connection reliance was placed upon H D Vora v State of Maharashtra, reported in AIR 1984 SC 866 at p 867 which brings out the distinction between the concepts of requisition and acquisition in following terms

The two concepts one of requisition and the other of acquisition are totally distinct and independent Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former The concept of acquisition has an air of permanence and finality in that there is

transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of domain or control over property without acquiring rights of ownership and must by its very nature be of temporary duration.

Thus, the Government cannot under the guise of requisition continued for an indefinite period of time in substance acquire the property because that would be a fraud on the power conferred on the Government."

23. A mere look at the aforesaid authority shall go to show that the title remains with the owner and does not vest in the State in the case of requisition. In requisition only possession over the property is taken for a limited period only. No issue was drawn on the point as to whether the possession of the disputed property was still with the State or not?

24. On the other hand, a perusal of para 27 of the written statement of defendant Ram Pyare shall go to show that after the vacation of the accommodation by defendant No. 2 in 1961 that portion was allotted to Smt. Kamal Kumari. Sri Sheo Dutt Misra vacated the accommodation in 1957. Thus, it is obvious that after the vacation of the premises by Sri Bal Mukund Sharma it was let out to so many tenants under the orders of allotment. Sri Deo Dutta Misra used to pay rent at the rate of Rs. 50/- per month. Thereafter Smt. Kamal Kumari wife of Sri Chhatra Shall Singh procured an order of allotment in her favour. It is obvious that the requisition, if any came to an end and the premises were let out to tenants under U.P. Urban Buildings (Regulations of Letting, Rent & Eviction) Act, 1972 (Act No. XIII of 1972) and other Acts which regulated the allotment and rent and eviction of such premises. The distinction between regulation, requisition and acquisition was pointed out in Mst. Bhagwati Devi v. Sardar Balwant Singh, reported in 1955 All LJ 1 (FB) in following terms —

When a property is requisitioned by the Government all that the person in possession of the house is deprived of is the actual physical possession thereof and not the legal right which had entitled him to remain in possession so that when the requisition order is withdrawn, it is only necessary to restore possession to the person from whom it was taken, but in the case of acquisition a right is acquired by the State and if the right, title or interest acquired is no longer needed it has to be legally transferred to whomsoever it is decided to give the right, title or interest. Regulation only means that the rights of the owner or the person entitled to possession are restricted and controlled by the requisite authority, the State Government neither acquiring possession nor the right to possession. It is therefore that while in the case of acquisition or requisition the State has to pay compensation for what the State has acquired, in the case of regulation of house accommodation no compensation is payable obviously because no rights in the property are acquired or get vested in the State.

25. So the property continues to belong to the Trust and the plaintiffs were well entitled to maintain an action. Learned lower appellate Court rightly rejected the amendment application dated 7.2.1973 moved by defendant appellant.

26. In the result, the appeal is dismissed with costs. Impugned judgment and decree are affirmed.

Appeal dismissed.

1986 ALL. L. J. 451

R. M. SAHAI, J.

Smt. Ram Kali, Petitioner v. IV Additional District and Sessions Judge, Kanpur and another, Respondents.

Writ Petn. No. 9164 of 1982, D/ 28-8-1985.

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S. 21(1)(a) Proviso 3 sub-cl. (ii) — Release of premises — Bar under Cl. (ii) — Attracted only if entire residential building is sought to be converted to business use — Dominant purpose test — Not applicable.

The landlady and her husband were in medical profession. After retirement of her husband the landlady moved an application u/s. 21(1)(a) for release of the disputed premises since they intended to start their practice and

reside in the disputed premises It was submitted that the portion available to them was not sufficient for comfortable living and carrying on medical practice Lower Court recorded a finding in favour of petitioner on comparative hardship However the appellate authority rejected the application because of sub-clause (ii) of third proviso of S 21 According to him as petitioner had applied for the release of the building for residence and for carrying on the profession of medicine it was contrary to sub-cl (ii)

Held that, the appellate authority committed an error of law in rejecting the application Expression in the case of any residential building for occupation for business purposes occurring in sub-cl (ii) of third proviso to S 21 obviously carves out an exception and restricts the right conferred on landlord u/s. 21 It has, therefore to be construed strictly The bar created by this sub clause is against conversion of a residential building into business purposes It does not even remotely suggest that an application for release of residential building for both residence and business purposes is not maintainable In other words the bar is only in those limited cases where a residential building is needed for business purposes And rightly so Business has been extended by R 2(b) to mean profession trade or calling Therefore Doctors, Lawyers Chartered Accountants Consultants etc are covered in it. It is common knowledge that normally such professionals in our State carry on their private practice from the house in which they reside Can it be said from use of the words of the section or from surrounding circumstances or any principle that Legislature intended to include in it even if the application was for release of a building both for residential and business purposes In various sections building or its part or whole building has been used but the Legislature significantly avoided use of any such word The conclusion therefore is inescapable that bar applies only if the landlord intends to convert the entire residential building for business purpose (Para 2)

Held further that the test of dominant purpose may not be needed in a bona fide application For instance in this very case petitioner has no other house She and her husband have retired from service But they being professional intend not only to live but carry on their medical profession as well, could there be a more genuine application Even if the petitioner s house would have been a small one and he would have opted to live in a small portion and devote the remaining and major portion for professional use the application could not be thrown out It is not the user of major or minor portion of the house for professional use which should in the least weigh for deciding if the application was hit by the proviso 1978 All LJ 1228 and (1979) 1 Ren CJ 272 (All) Rel on (Para 2)

Cases Referred Chronological Paras

(1985) 2 All Rent Cas 206 1985 All CJ 661 2
1984 All LJ 655 (1984) 2 All Rent Cas 1 AIR 1984 SC 1376 5
(1979) 1 Ren CJ 272 1978 All Rent Cas 467 2
1978 All LJ 1228 (1979) 1 Ren CJ 23 2

H S Nigam for Petitioner B R Dubey for Respondents

ORDER — In this landlord s petition the questions that arise for consideration are mainly of law Admittedly petitioner and her husband were in medical profession They retired from service sometime in 1970 and 1973 respectively After retirement of husband petitioner moved an application in 1973 u/s 21(1)(a) of U P Act XIII of 1972 for release of the disputed premises It was claimed that her husband has vacated the official residence on 12th July 1973 but he has been permitted to retain possession of only one room with permission of his successor in office till such time he made arrangement for getting his own house vacated According to the applicant both she and her husband wanted to establish at Kanpur the only place where the applicant owned a house and as both of them were in good health they intended to start their practice and reside in the premises in dispute According to her they needed separate premises for the purposes of consultation and examination of patients and adequate accommodation for residence befitting to their status On the date when the application was made the petitioner was in occupation of Do-chhatti having a room and two small stores with garage and room underneath and latrine and bath room vacated by one Mahavir Saran The application was filed against all the tenants who were in occupation of the house All the

tenants except opposite party vacated the premises during pendency of the application Consequently the application was amended under Order VI R. 17 of the Civil Procedure Code In the amendment application it was stated that the portion occupied by other tenants had been vacated and was available to the applicant but it was not sufficient for comfortable living and carrying on medical practice The opposite party who is also a Chartered Accountant contested the claim and alleged that the house in dispute was not needed by the petitioner or her husband as they were residing with their son at Allahabad It was also claimed that they did not intend to set up any medical practice nor it was practicable for them to start it at this stage at Kanpur It was also alleged that opposite party had been carrying on his profession in the premises in dispute for a long time and he had built up a practice and will be put to great inconvenience if he was asked to vacate the same The prescribed authority found that considering status of the petitioner and her husband and their necessity the accommodation which had come into their possession as a result of its vacation by various tenants was insufficient. It was also observed that from report of the Commissioner and evidence on record it was established that she and her husband had started a clinic in front portion of the disputed house vacated by some tenants. It strengthened their case that they intended to start practice and needed the accommodation in dispute Consequently it was held that need of petitioner was bona fide On comparative hardship also the finding was recorded in favour of petitioner It was held that opposite party had acquired a house in Higher Income Group from Kanpur Development Authority He did not believe the case of opposite party that he had transferred the same to one Y K Chug According to him it was an excuse and even if it was true it did not in any way affect the application filed on behalf of petitioner The Prescribed authority therefore held that the likely hardship to the petitioner was greater In appeal the order was set aside more as a matter of law than on consideration of material on record in respect of bona fide need or comparative hardship The appellate authority found the application u/s 21(1)(a) was liable to be rejected because of sub-clause (ii) of third proviso of S 21 According to him as petitioner had applied for the release of the building for residence and for carrying on the profession of medicine it was contrary to sub-clause (ii) It was also observed half heartedly that a major portion of the accommodation was required by petitioner for business purpose and the accommodation which had come into her possession being sufficient for the requirement the application was liable to be dismissed.

2. In order to appreciate the correctness of view expressed by appellate authority on sub-clause (ii) it is extracted below

> (ii) in the case of any residential building for occupation for business purposes

It obviously carves out an exception and restricts the right conferred on landlord u/s. 21 of the Act It has therefore to be construed strictly Nothing should be added to it to enlarge its scope Its construction should be restricted to what is reasonably conveyed from the words used by it. Keeping these principles in mind one is immediately struck that the bar created by this sub-clause is against conversion of a residential building into business purposes. It does not even remotely suggest that an application for release of residential building for both residence and business purposes is not maintainable In other words the bar is only in those limited cases where a residential building is needed for business purposes And rightly so Business has been extended by R 2(b) to mean profession, trade or calling. Therefore Doctors Lawyers Chartered Accountants Consultants etc are covered in it. It is common knowledge that normally such professionals in our State carry on their private practice from the house in which they reside Can it be said from use of the words of the section or from surrounding circumstances or on any principle that Legislature intended to include in it even if the application was for release of a building both for residential and business purposes. In various sections building or its part or whole building has been used but the Legislature significantly avoided use of any such word. The conclusion, therefore, is inescapable that bar applies only if the landlord intends to convert the entire residential building for business purpose. It is argued that dominant purpose of petitioner being for business purpose the proviso was applicable This court has no doubt observed in Dr B N

Joshi v II Addl. District Judge (1985) 2 All Rent Cas 206 that while considering whether the bar under Cl (ii) of the first proviso applies or not the criterion which has been adopted to resolve this controversy is what is the dominant purpose which determines the nature of the building This test has been developed only with a view to guard against unscrupulous landlords who may make out a pretext for release But the test of dominant purpose may not be needed in a bona fide application. For instance in this very case petitioner has no other house She and her husband have retired from service But they being professional intend not only to live but carry on their medical profession as well could there be a more genuine application Even if the petitioner's house would have been a small one and he would have opted to live in a small portion and devote the remaining and major portion for professional use the application could not be thrown out. It is not the user of major or minor portion of the house for professional use which should in the least weigh for deciding if the application was hit by the proviso In Chunni Lal v Addl District Judge Farrukhabad (1979) 1 Ren CJ 23 (1978 All LJ 1228) it was held by this Court that where a person requires a house for residence as well as for his office the application could not be thrown out as being one for business purposes The same view was taken in R L Kastoori v III Addl. Dist. Judge (1979) 1 Ren CJ 272 The appellate authority therefore committed an error of law in rejecting the application as barred by sub-clause (ii) of the third proviso

3. For the petitioner it was urged that if the application was not barred by sub-clause (ii) of the first proviso then the application of the petitioner was liable to be allowed. According to him the opposite party having acquired a house he could not contest the application filed by petitioner in view of sub-clause (1) of the Explanation which runs as under —

1) Where the tenant or any member of his family (who has been normally residing with or is wholly dependant on him) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city municipality notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained "

According to opposite party he did not have any house in his possession which could attract the applicability of the explanation He relied on the allegations made in his behalf before the prescribed authority According to him as he had transferred the premises in favour of one Y K. Chug he was not the owner and therefore he could not be considered to be a person who has acquired any vacant accommodation The argument is without substance It as admitted in the affidavit and the application filed on behalf of opposite party that he had applied for a house in a Higher Income Group which was allotted to him in Kanpur by Kanpur Development Authority It is stated that finally when the allotment was made he could not pay the consideration to the Kanpur Development Authority and therefore he approached Sri Chug and deposited the amount on his behalf It is very difficult to accept this statement as it is admitted that he deposited the entire amount with Kanpur Development Authority and the authority issued receipt in his name and the certificate for delivery of possession was also issued in name of opposite party The Prescribed Authority was justified in inferring that it was only an excuse Learned counsel for opposite party urged that Sri Chug has filed affidavit in this Court It may be so but the circumstances speak for themselves It is clear that the house was purchased by opposite party and he is owner of it. The claim of transfer in favour of Sri Chug is not substantiated. The appellate authority had also not set aside this finding

4 Learned counsel for opposite party urged that even if Explanation applied it could not automatically result in allowing of the application for release The petitioner had yet to satisfy the basic requirement of S 21(1)(a) that is her need was bona fide And according to him as appellate authority had held that need of petitioner was not bona fide and that being a finding of fact howsoever shaky the application was liable to be dismissed The submission is devoid of any merit The appellate authority having erroneously decided the question of law observed in that context that need of petitioner was not bona fide The finding is vitiated because it is not based on material on record It was as a result of his views on sub-clause (ii) to the proviso as that could not be taken into account the finding is based on irrelevant consideration. Then the

appellate authority did not set aside the finding of Prescribed Authority that sub-clause (iv) of Explanation to S 21 applied Therefore the objection of opposite party could not have been examined. The question of bona fide need was to be decided on petitioner's allegations and evidence alone In the circumstances it is expedient to direct the appellate authority to decide the appeal afresh.

5 Learned counsel for petitioner urged that Explanation (iv) as it existed on the date when the application was filed was applicable to the petitioner's case According to him as petitioner had come into occupation of one of the portion and his need was found to be bona fide his need for the remaining portion could be deemed to be bona fide Reliance is placed in this regard on paras 10 11 and 12 of the application Learned counsel for opposite party has produced an uncertified copy to show that these allegations were not raised in the original application To that extent he is right and the petitioner probably did not raise before the Prescribed Authority or appellate authority as the view taken by this Court was that after deletion of Explanation (iv) it could not be taken advantage of But in view of the decision of Supreme Court in Kailash Nandan Prasad v Addl Dist. Judge Moradabad (1984) 2 All Rent Cas 1 (1984 AllLJ 655) the position has substantially changed As right of the parties has to be decided on basis of facts as it existed before the Explanation was deleted the point is now not only to be entertained but its investigation has become necessary As the facts on this aspect are not clearly available on record it is expedient that the appellate authority may examine this as well.

6. In the result this petition succeeds and is allowed The order passed by the appellate authority is quashed. The appellate authority is directed to decide the appeal afresh in the light of the observations made above The appeal shall be decided within a period of three months from the date the copy of the order is produced before it Parties shall bear their own costs

Petition allowed

1986 ALL. L. J 455

B L YADAV J

Smt. Sunri, Petitioner v Deputy Director of Consolidation Jaunpur and others, Respondents

Civil Misc Writ Petn No 4850 of 1972 D 8-7 1985

(A) U P Consolidation of Holdings Act (5 of 1954), Ss 9A(1) and 11 — Conciliation proceeding under S 9A(1) — Appeal challenging content of deed of conciliation on ground of fraud — It is maintainable — Doctrine of non est factum

Where against an order passed by the Assistant Consolidation Officer on the basis of the compromise arrived at between the parties in the conciliation proceeding under S 9A(1) an appeal was filed under S 11 of the Act on the ground that no conciliation was arrived at or that fraud was committed held the appeal was maintainable

(Paras 8 and 15)

The party was misled into executing a deed of conciliation or signing or putting her thumb impression on a document essentially different from one that she intended to execute or sign and therefore she could very successfully raise plea of non est factum as it was obvious that her mind did not accompany the signature or thumb impression and that she never intended to sign or put thumb impression on the transaction to which her name was appended. In this way there was no legal existence of such a document and the doctrine of non est factum was obviously proved 1979 All WC 524 and 1970 Rev Dec 147 Distinguished (1869) LR 4 CP 704 AIR 1957 SC 532 and AIR 1968 SC 956 Rel on (Para 7)

(B) Civil P C (1908) O 19, R 1 — Uncontroverted affidavit — It cannot be disbelieved in absence of inherent defects in it. AIR 1962 All 407 Rel. on (Para 9)

(C) U P Consolidation of Holdings Act (5 of 1954), S. 11 — Appeal — It cannot be decided without giving opportunity to party to be heard — (Maxims — (1) Audi Alteram Partem (2) Actus Curiae Neminem Gravabit). (Constitution of India, Art. 226).

JC/CD/F720/85/SRK

Appeal can be decided only after affording opportunity of being heard to the parties concerned It is therefore clear that hearing to the other side is a must Hearing obviously in such situation means opportunity to lead evidence Further if an act is to prejudice no men in that event also opportunity for hearing and leading evidence has to be granted

(Paras 10 11)

Cases Referred	Chronological	Paras
1979 All WC 524	1979 (5) All LR 487	4 5 7
1970 Rev Dec 147		8
AIR 1968 SC 956		6
AIR 1962 All 407		9
AIR 1957 SC 532		14
(1869) LR 4 CP 704	20 LT 887 17 WR 1105	
Foster v Mackinon		5
(1584) 76 ER 408	(1584) 2 Co Rep	9a
Tharoughgood v Cole		5

S K Srivastava and T. P Singh for Petitioner Sankatha Rai and Standing Counsel for Respondents

ORDER — This writ petition is directed against the order dt 11th Aug 1971 passed by Sri Parmanand Mishra, Deputy Director of Consolidation, Jaunpur the order dt. 31st Dec 1970 passed by the Assistant Settlement Officer (Consolidation) and the order dt 25th Jan 1968 passed by the Assistant Consolidation Officer in a proceeding under S 9A(1) of the U P Consolidation of Holdings Act (for short the Act)

2. The facts of the case are in a very narrow compass A conciliation in respect of the plots in dispute was arrived at between the parties and the order was passed by the Assistant Consolidation Officer on 25th Jan. 1968 The petitioner preferred an appeal challenging the conciliation mainly on the ground that she did not enter into any compromise in respect of Khata No 1B hence the order passed may be set aside There was some delay in filing the appeal which was condoned and thereafter the Assistant Settlement Officer (Consolidation) decided the case on merits holding that the rights of the parties are based on the basis of the nature of the acquisition of the plots which were ancestral In this connection in appeal no opportunity was given to the petitioner or to the contesting respondents to lead evidence The revision of the petitioner before the Deputy Director of Consolidation also met the same fate

3 The learned counsel for the petitioner urged that even the Assistant Settlement Officer (Consolidation) has recorded a finding on the merits of the case that the petitioner cannot get any right in the land in dispute on the basis of the nature of the acquisition of the plots without providing an opportunity either to the petitioner or to the contesting respondents to lead evidence An observation about this fact has been made by the Deputy Director of Consolidation An appeal arising from an order of conciliation under S 9A(1) of the Act cannot be decided on merits of the case making reference to evidence when in fact no opportunity to lead evidence was given to either of the parties

4 On the other hand, the learned counsel appearing for the contesting respondents has urged that in respect of the compromise the allegations were made about the fraud and the contents of conciliation were also challenged. In that event it shall be a case of voidable document and the civil Court alone had jurisdiction to decide the controversy and not the Consolidation Authorities According to learned counsel the appeal preferred by the petitioner was not maintainable as she should have filed a civil suit He placed reliance on Sheopal v Smt Lakhpata, 1979 All WC 524 But that was a case in respect of the suit filed in Civil Court for cancellation of the sale deed and controversy was about void or voidable nature of document and in the meanwhile the consolidation operations had commenced The question arose as to whether a suit for cancellation of sale deed can be abated under S 5(2)(a) of the Act. On those facts it was held by this Court that the suit for cancellation of the sale deed which was voidable in nature would abate under S 5(2)(a) of the Act But that analogy cannot be borrowed in the instant case where against an order under S 9A(1) of the Act the appeal has been provided under S 11 of the Act

5 In Sheopal v Smt. Lakhpata (supra) it was observed on page 527 as follows —

If however a party has been misled into executing a deed or signing a document essentially different which he intended to execute or sign he can raise the plea known in English Law as the plea of non

est factum In most of the cases in which the plea of non est factum has been successfully pleaded the mistake has been induced by fraud"

Further in the case of Sheopal Das (supra) reference has been made to Chitty on contracts Twenty Fourth edition page 299 and in that connection the reference was made to the case in Thoroughgood v Cole (1584) 76 ER 408 in which it was held that a deed executed by an illiterate person does not bind him if read falsely either by the grantee or a stranger Further Thoroughgood's case (supra) was considered in Foster v Mackinnon (1869) LR 4 CP 704 and the observation was made as follows —

It seems plain, on principle and on authority that, if a blind man or a man who cannot read or who for some reason (not implying negligence) forbears to read has a written contract falsely read over to him, the reader misreading to such degree that the written contract is of a nature altogether different from the contract pretended to be read from the paper which the blind or illiterate man afterwards signs then at least if there be no negligence the signature so obtained is of no force And it is invalid not merely on the ground of fraud where fraud exists, but on the ground that the mind of the signer did not accompany the signature in other words that he never intended to sign and therefore in contemplation of law never did sign the contract to which his name is appended"

6 The aforesaid observation was relied upon in Ningawa v Byrappa Shiddappa Hirekuraba AIR 1968 SC 956 It is thus obvious that in the instant case also the petitioner alleged in an unequivocable language that she never intended to include plots of Khata No 1B and it was fraudulently inserted in the conciliation In this way it is clear that she never intended to sign it and such a document cannot bind her

7 In view of the aforesaid discussions it is evident that in the instant case before me the petitioner was misled into executing a deed of conciliation or signing or putting her thumb impression on a document essentially different from one that she intended to execute or sign and she could very successfully raise plea of non est factum and it is obvious that her mind did not accompany the signature or thumb impression and that she never intended to sign or put thumb impression on the transaction to which her name was appended In this way there was no legal existence of such a document and the doctrine of non est factum was obviously proved I am, therefore of the opinion that the case of Sheopal v Smt Lakhapata (1979 All WC 224) (supra) does not help the contesting respondents rather it goes against them

8. On behalf of the contesting respondents reliance was placed on Munshi Singh v Dy Director of Consolidation (1970 Rev Dec 147) (DB) In that case the facts were that the Deputy Director of Consolidation had decided the revision and thereafter an application was filed in the form of review that the order passed by the Deputy Director of Consolidation was passed on the basis of fraud and in that reference was held that the remedy for the applicant was to file a civil suit for setting aside the order on the ground of fraud. But in the instant case the facts are entirely different and against the order passed by the Assistant Consolidation Officer on the basis of the Compromise arrived at between the parties an appeal was filed by the petitioner under S 11 of the Act and the grievances of the parties including the allegation that no conciliation was arrived at or that fraud was committed could also be gone into by the appellate authority This case is also not indistinguishable

9 No counter affidavit has been filed by the contesting respondents denying the allegations made in paragraph 11 of the writ petition that no opportunity was given by Assistant Settlement Officer (Consolidation) to lead evidence It is well settled that any uncontroverted affidavit cannot be disbelieved unless there are some inherent defects in it (See Juggi Lal Kamla Pati v S Ram Janki Gupta AIR 1962 All 407 (DB))

10. Further under the U P Consolidation of Holdings Act a clear provision has been made under S 11 that appeal would be against an order under S 9A (including an order passed in conciliation proceedings) Such appeal can be decided after affording opportunity of being heard to the parties concerned In the instant case the uncontroverted affidavit of the petitioner was

that no opportunity for hearing or for leading evidence was given

11 In this connection it will not be out of place to mention few relevant maxims (1) Audi Alteram Partem which means hear the other side and (2) Actus Curiae Neminem Gravabit, i e an act of the Court shall prejudice no man It is therefore clear that hearing to the other side is a must Hearing obviously in such situation means opportunity to lead evidence Further if an act is to prejudice no man in that event also opportunity for hearing and leading evidence has to be granted

12 As no counter affidavit has been filed on behalf of the contesting respondents in spite of sufficient opportunity being given to them the allegations in the petition that the land in dispute was acquired by the petitioner on the basis of a gift deed in her favour from her mother and that the land in dispute described in Khata No 1B being never in dispute was fraudulently inserted in the conciliation and the contesting respondents were given no shares in the said property cannot be disbelieved It has also been alleged in paragraphs Nos 22 and 23 of the petition that the land was petitioner s self acquired property and that no such dispute was ever raised by respondents that the land was ancestral acquisition

13. As an order for conciliation was passed by the Assistant Consolidation Officer and under S 11 of the Act the appeal was provided against such an order and grounds of appeal can be that nature of conciliation can be challenged on ground of fraud.

14 Salmond in his Jurisprudence (11th Edition) page 152 observes that duty of judicature is to act upon the true intention of legislature the Mens or Sententia Legis In News Papers Ltd. v State Industrial Tribunal, AIR 1957 SC 532 it was held that every part of statute should be construed with reference to context

15 In the present case against the order passed by Assistant Consolidation Officer appeal was maintainable and Civil Court has no jurisdiction

16. In view of discussions made above I allow the writ petition and quash the impugned orders of the Deputy Director of Consolidation dt 11th Aug 1971 and that of the Assistant Settlement Officer (Consolidation) dt. 31st Dec 1970 as also that of the Assistant Consolidation Officer dt 25th Jan 1968 and direct the Consolidation Officer to decide the case afresh after affording proper opportunity to the parties for being heard and to lead evidence in the light of the observations made above There shall, however be no orders as to costs

Petition allowed

1986 ALL. L J 458

K P SINGH J

Nathu Prasad and another Petitioners v Deputy Director of Consolidation Banda and others Respondents

Civil Misc Writ Petn No 9608 of 1985 D/ 23-9 1985

(A) U P Consolidation of Holdings Act (5 of 1954), S 41 — Dismissal of objection in default — Consolidation Officer has jurisdiction to restore it (U P Land Revenue Act (3 of 1901), Ss 200 and 201). (Para 7)

(B) Constitution of India, Art 226 — Restoration of case after granting of opportunity to party — High Court in exercise of its powers under Art 226 will be loath to interfere with order of subordinate authorities (U P Consolidation of Holdings Act (5 of 1954) S 41) (Para 7)

Cases Referred	Chronological	Paras
1981 UPLT NOC 207	1981 Rev Dec 307	4
AIR 1973 All 411		5
AIR 1973 All 414		6

Vijay Manohar Sahai for Petitioners
Standing Counsel for Respondents

ORDER — This writ petition is directed against the order of the Consolidation Officer dated 13 5 1985 and confirmed by the revisional court on 2 7 1985

2 It appears that an objection filed by the contesting opposite party was dismissed in default on 3-6-1983 A restoration application

was moved on 6-7 1984 which was allowed by the Consolidation Officer through his order dated 13-5-1985 and the aforesaid order was confirmed by the revisional court on 2 7 1985 Aggrieved the petitioners have approached this Court under Article 226 of the Constitution.

3 The learned counsel for the petitioners has contended before me that close of the consolidation operation regarding the village wherein the disputed land is situate had taken place on 12 11 1983 therefore the consolidation officer had no jurisdiction to allow the restoration application moved by the contesting opposite party The revisional court has patently erred in confirming the order

4 The learned counsel for the contesting opposite party has tried to refuse the contentions raised on behalf of the petitioners. My attention has been drawn to the ruling reported in 1981 Rev Dec 307 Shyam Narain Rai v Dy Director of Consolidation, Balha wherein a learned single Judge of this Court has indicated that even after the notification a restoration application can be filed with an application for condonation of delay under S 5 of the Limitation Act

5. In AIR 1973 All 411 Dilawar Singh v Gram Samaj a Division Bench of this Court has indicated thus vide paragraph 7

This indicates that there is no basic difference between the appellate and the revisional powers If under a statute a party has a right to approach the superior Court with a prayer to revise the order of the subordinate Court, the proceeding can be said to be pending till the right to exercise the right of approaching the superior Court subsists in the applicant and so long that right subsists, it cannot be said that the proceedings had finally come to an end. The right to approach the Superior Court through an appeal or a revision can be exercised only after an adverse judgment or order is passed against the party Till then the right only remains dormant and when that right is exercised, the original proceedings become pending "

6. In AIR 1973 All 414 Ram Bahadur v D D C another Bench of this Court has indicated that the principle enunciated in the ruling reported supra, is applicable to an application for setting aside an ex parte order Section 41 of the U P C H Act makes the provisions of Chapters IX and X of the U P Land Revenue Act applicable to all proceedings under the Consolidation of Holdings Act. Sections 200 and 201 of the U P Land Revenue Act are in Chapter IX. Section 200 provides that whenever any party to such proceeding neglects to attend on the day specified in the summons or on any day to which the case may have been postponed the Court may dismiss the case for default or may hear and determine it ex parte Section 201 says that no appeal shall lie from an order passed under S 200 ex parte or by default. That Section provides for rehearing on proof of good cause for non appearance (See paragraph 3 of this Ruling)

7 In view of the above observations of the Division Benches of this Court, I find no merit in the contention of the learned counsel for the petitioners that the consolidation officer had no jurisdiction to restore the objection dismissed in default It is well known that when a case is restored and an opportunity for hearing to a party is granted, this Court is very loath to interfere with the order of the subordinate authorities in the exercise of its powers under Art 226 of the Constitution

8. In the result, the writ petition fails and is dismissed There would be no order as to costs.

9 Both the parties have been heard at the admission stage and the claims of the parties have been decided on merits in accordance with the principle contained in 2nd Proviso to Rule 2 of Chapter XXII of the Allahabad High Court Rules 1952.

Petition dismissed

1986 ALL L J 460

O P SAXENA J

M/s. Hindustan Aeronautics Ltd. Appellant
v
Karmachari Sangh and others Respondents

F A F O No 543 of 1985 D/ 16-9 1985 *

(A) Civil P C (5 of 1908), O 39 R. 2(2), Proviso, Cl. (e) (As inserted by U P Act 57 of 1976) — Temporary injunction — Cannot be granted to restrain election.

(Paras 11, 17)

(B) Civil P C (5 of 1908), O 39 R. 2(2), Proviso, Cls (d), (e) — (As inserted by U P Act 57 of 1976) — Provisions under Cls (d) and (e) are not analogous to each other

(Para 17)

Cases Referred Chronological Paras

AIR 1982 Andh Pra 208 12
1981 UPLT NOC 187 1981 UPLBEC 463 13 17
AIR 1952 SC 64 12

Ravi S Dhavan, for Appellant

JUDGMENT — This appeal under O 43 R 1(R) C P C has been filed against the order dated 17 8 85 passed by the II Civil Judge Kanpur

2. The plaintiff is a Government Company duly incorporated and registered under the Companies Act 1956 Defendant No 1 is the recognised trade union of workers of the plaintiff Company Sri D N Pandey is the president and Sri R C Dwivedi is the secretary of defendant No 1 There is a Constitution of defendant No 1 and the elections of the Executive Committee are held according to the terms of the constitution On 22nd July 1985 an announcement was made for the next elections 1st Aug to 3rd Aug was fixed for filing nomination 5th Aug was fixed for scrutiny 6th Aug was fixed for withdrawal 8th Aug was fixed for announcement of the final list of the candidates 13th Aug was fixed for the elections

3 On 12 8 85 plaintiff filed a suit for a permanent injunction restraining defendants Nos 4 to 10 from contesting the elections for the office bearers of defendant No 1 restraining defendants 1 to 3 from taking into account the votes of defendants Nos 4 to 10 if polled at the elections to be held and further restraining defendants Nos 1 to 3 from announcing the result of the elections on the basis of the votes cast by defendants 4 to 10 The main objection of the plaintiff was that according to Cl (4) of the Constitution only those persons who were actually employed in the plaintiff Company are entitled to participate in the elections The plaintiff's case was that defendants 4 to 10 were dismissed by he plaintiff company during the period from 1981 to 1985

4 On 13th Aug the Court below passed the following order —

The result of the defendants Nos 4 to 10 be not declared on 14-8 85

5 The application was contested by defendant No 1 through its President Sri D N Pandey and also by the other defendants It was said that only defendants 4 to 6 were dismissed in the year 1981 and defendants 7 to 10 were employees of the plaintiff Company on the date of the notification of the elections When the dismissal order was received the president informed the Election Officer Defendants 4 to 10 have challenged their dismissal before the labour Court and the matter is sub judice It was said that under Cl. (4) of the Constitution of defendant No 1 a dismissed employee would also be deemed to be a worker within the meaning of S 2(s) of the Industrial Disputes Act, 1947 and he could participate in the elections It was said that the plaintiff was not entitled to an injunction in view of the U P Amendment to O 39 R 2 C P C Another plea taken was that the plaintiff could file an objection before the Registrar of the Trade Unions under Regulation 17A of the U P Trade Unions Regulation 1927

6. On 17 8 85 the Court below dismissed the application for injunction and vacated the interim order passed on 13-8-85

7 The present F A F O was filed on 19th Aug 1985 and the following interim order was passed —

* Against judgment and order of A G Lal 2nd Civil J Kanpur D/ 17 8-1985

Meanwhile the operation of the declaration of the result of the election will remain suspended till 29th August 1985

8. In the affidavit filed in support of the stay application similar grounds have been raised as were raised before the Court below. In the counter affidavit filed by respondents Nos 4 to 10 also similar grounds were raised as were raised before the Court below. Clause 4 of the Constitution was quoted and it was pointed out that the English definition given in the affidavit in support of the stay application is incorrect. Cl 4 does not use the words "actually employee" and even a dismissed employee would be deemed to be an ordinary member of defendant No 1. It was also said that the result of 14 out of 31 candidates was declared on 19th Aug 1985 and respondents" to 9 were declared duly elected as members of the Executive Committee of respondent No 1. Annexures CA 6A 6B and 6C were filed. In the counter affidavit filed by respondent No 1 however a stand contrary to the one taken in the Court below was taken. An objection to the injuction application and the affidavit in support thereof has been filed by Sri D N Pandey President of the respondent No 1. A counter affidavit before this Court has been filed by Sri R. C Dwivedi, the Secretary of respondent No 1 supporting the case of appellant. Rejoinder affidavit has also been filed

9 I have heard the learned counsel for the parties and perused the affidavits along with annexures exchanged between the parties

10 The main point for determination in this appeal is as to whether it is legally permissible to give a temporary injunction of the nature sought for by the appellant in view of the provisions of O 39 R. 2(2) Proviso (e) C P C

11 The relevant provision is that no injunction can be granted to restrain any election

12 In view of the decisions in N P Ponnuswami v Returning Officer Namakkal, AIR 1952 SC 64 and A Appalaraju v P Siva Kondarao AIR 1982 Andh Pra 208 it can hardly be disputed that the word election indicates the entire process culminating in a candidate being declared elected. The process commences with the notification of election and ends with declaration of result. The filing of nomination papers scrutiny withdrawal and the polling are intervening steps

13 The learned counsel for the appellant submitted that Proviso (d) provides that no injunction shall be granted to effect the internal management of any educational institution including a University or a Society. He submitted Proviso (d) may not apply in the present case strictly but the provisions are similar to the provisions of proviso (e). He placed reliance on the case of Mahabir Singh v I Addl District Judge Meerut 1981 U PLBEC 463 (1981 UPLT NOC 187). It was held on page 469 —

In the instant case no injunction has been sought against the whole committee of management on the ground that one of its members has become disqualified to hold office. The injunction has been sought only against that person who has ceased to be a member because he has incurred a disqualification and even on whose ceasing to hold office the management of the college can smoothly go on in view of those bye laws of the Society which provide for such a contingency and on which reliance has been placed in the impugned order. For the reasons given above I am of opinion that Cl (d) of the proviso to Sub-rule (2) R 2 of O XXXIX of the C P C as inserted by U P Act 57 of 1976 will not be attracted to the facts of the instant case"

14. The learned counsel for the appellant submitted that the respondents Nos 4 to 10 are not prima facie qualified to offer themselves for election to the membership of the Executive Committee of respondent No. 1 and in this view of the matter if an injunction is granted, the question of any interference or restraint in the election does not arise. He contended that the respondents Nos. 4 to 10 are rank outsiders and not even ordinary members of respondent No 1 and thus they could not participate in the elections. Reliance was placed on the English copy of the consutution submitted by respondent No 1 to the office of the plaintiff appellant

15. The learned counsel for respondents Nos 4 to 10 drew my attention to S. 6 sub-cl (e) of the Trade Unions Act. It provides

that a trade union shall not be entitled to registration under this Act unless the executive thereof is constituted in accordance with the provisions of this Act and the rules thereof provide for the following matter viz —

(e) the admission of ordinary members who shall be persons actually employed or employed in an industry with which the trade union is connected and also the admission of the member of honorary or temporary members as office bearers required under S 22 to form the executive of the Trade Union

My attention was also drawn to S 22 of the Trade Unions Act which provides as below —

22 Proportion of officers to be connected with the industry — Not less than one half of the total number of the office-bearers of every registered union shall be persons actually engaged or employed in an industry with which the Trade Union is connected

Provided that the appropriate Government may by special or general order declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order

16. Learned counsel for the appellants submitted that the constitution of the respondent No 1 does not provide for outsider to become members of the Executive Committee

17 As I am concerned with a limited question as to whether Proviso (e) referred to above applies to the present case I do not find it necessary to go into other matters The bar set out in Proviso (e) is absolute and it is not removed by the circumstances pointed out by the learned counsel for the appellant Whether respondents Nos. 4 to 10 are entitled to contest election or not is wholly irrelevant to the question as to whether the Court can grant an injunction restraining any election The bar only puts an embargo on the powers of a Court to grant an injunction restraining any election It does not come in the way of the parties in challenging the legality or validity of the elections in accordance with law Simply because persons who are disqualified are participating in the election, the Court cannot have a right to interfere in the election The policy of the legislature appears to be that the election should be held unhampered by any interim orders of Courts of law and the validity of the election should be considered at a later stage in accordance with law I am unable to accept that the provisions of Proviso (e) and Proviso (d) are analogous to each other The case of Mahabir Singh v The I Addl District Judge Meerut, 1981 UPLBEC 463 (1981 UPLT NOC 187) (supra) provides no guideline on the point in issue I hold that the Proviso (e) applies and no temporary injunction may be granted to restrain the election The court below rightly rejected the application for temporary injunction

18. The appeal is dismissed and the interim order dated 19th August 1985 is vacated

19 The learned counsel for the appellant made an oral prayer for permission to file a Special Leave Petition before the Supreme Court I am not satisfied that this case raises any substantial question of law of general importance which needs decision by Supreme Court The oral prayer is refused

20 A copy of the order may be issued to the parties on payment of usual charges today

Appeal dismissed

1986 ALL. L. J 462

S D AGARWAL J

Ram Kumar Petitioner v 2nd Additional District and Sessions Judge Bareilly and others, Respondents

Civil Misc Writ No 24 of 1977 D/ 21 8-1985

U P Public Premises (Eviction of Unauthorised Occupants) Act (22 of 1972), Ss 5, 9, 17(2) — Appeal — Maintainability — Prescribed authority refusing to make order for eviction — Appeal against — Maintainable (Para 8)

Bharati Agarwal, for Petitioner Standing Counsel, for Respondents.

ORDER — This is a petition under Article 226 of the Constitution

2 The proceedings for eviction were initiated in respect of a part of the road land connecting Delhi Bareilly Lucknow road on the Collector buckganj side Initially the State of Uttar Pradesh and the Union of India respondent Nos 2 and 3 filed a suit against the petitioner in the Court of Munsif Hawali Bareilly in the year 1969 The U P Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the Act) was promulgated. In view of S 20(2) of the Act, the suit pending in the Court of Munsif Hawali, Bareilly stood transferred to the Prescribed Authority under the provision of the Act

3. The Prescribed Authority directed the petitioner to file objections The objections were filed. By an order dated 13th May 1975 The Prescribed Authority dismissed the application for ejectment of the petitioner from the land in dispute Against the order of the Prescribed Authority dated 13th May 1975 the State of Uttar Pradesh filed an appeal in the Court of the District Judge Bareilly under S 9 of the Act, being Civil Appeal No 524 of 1975 When the appeal was filed the petitioner moved an application that no appeal was maintainable and, as such, this be decided as a preliminary point

4. The 2nd Additional District and Sessions Judge Bareilly by his judgment dated 5th November 1976 did not find force in the preliminary point raised by the petitioner and held that the appeal was maintainable It is against the order dated 25th November 1976 that the present petition has been filed

5 I have heard the learned counsel for the petitioner and the learned Standing Counsel

6. Learned counsel for the petitioner has urged that no appeal is maintainable against the order of the Prescribed Authority refusing to make an order of eviction under S 5 of the Act and, as such, the order passed dated 25th November 1976 is manifestly erroneous

7 Learned Standing Counsel has brought to my notice S 17 of the Act. Section 17(2) of the Act specifically provides as under

17(2) In particular and without prejudice to the generality of the provisions of sub-sec (1) the State Government or the corporate authority as the case may be shall have a right to produce evidence and cross examine witnesses and to prefer an appeal under S 9 against an order of the Prescribed Authority refusing to make an order of eviction under S 5 or to make an order under S 7 requiring a person to pay rent or damages

8. The above sub-sec (2) of S 17 of the Act is very specific It clearly gives a right to the State Government or to a corporate authority to prefer an appeal under S 9 of the Act against an order of the Prescribed Authority refusing to make an order for eviction under S 5 of the Act In view of this provision the appeal clearly lay against the order of the Prescribed Authority The impugned order is in accordance with law and I do not find any infirmity in the same

9 In the result, the petition is dismissed The interim order dated 3rd January 1977 is hereby vacated. The appellate Court is directed to dispose of the appeal very expeditiously The parties are directed to bear their own costs

Petition dismissed

1986 ALL. L. J 463

B L. YADAV J

Rasheed Ahmad and another Petitioners v Board of Revenue U P at Allahabad and others. Respondents

Civil Misc Writ Petn. No 15049 of 1982 D/ 22 5 1985

(A) Evidence Act (1 of 1872), Ss 50 and 60 — Relationship — "Opinion expressed by conduct"

The person whose opinion is expressed by conduct must have special means of knowledge about relationship and the opinion must be expressed by his conduct The opinion expressed by conduct certainly means something more than mere retailing of gossip AIR 1959 SC 914 Followed. (Para 6)

(B) Limitation Act (36 of 1963), Arts. 64 and 65 — Possession of co-tenants — Possession of one co-tenant is possession of all — Unless ouster is set up and proved right

of other co-tenants does not come to end
(Para 10)

Cases Referred	Chronological Paras
AIR 1959 SC 914	4 5

S N Singh Chauhan for Petitioners
Standing Counsel for Respondents

ORDER — The present writ petition under Art 226 of the Constitution of India is directed against the order dt 19 8 1971 passed by the Judicial Officer Moradabad the order dt 30 7 73 passed by the Additional Commissioner and the order dt 30-9 82 passed by the Board of Revenue in a suit under S 229B of the U P Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) filed by respondent Nos 4 and 5 claiming co-tenancy and co-sirdari/bhumidari rights alleging that their father Masit Ullah was the father of Bulaki, who was the common ancestor of the parties and who had acquired the plots in dispute and his other two sons namely Annu was the father of the petitioners and the third son Khuda Bux died leaving behind his widow Smt. Sundaria After the death of the latter the share of respondent Nos 4 and 5 and that of the petitioners became 1/2 and 1/2 But in the revenue papers the names of respondent Nos 4 and 5 did not appear and the petitioners were denying the title of respondent Nos 4 and 5 Hence the necessity for filing the suit arose

2. The suit was contested by the petitioner alleging that respondent Nos 4 and 5 were not the co-tenants nor co-Sirdar/Bhumidar and that Masit Ullah father of respondent Nos. 4 and 5 was not the son of Bulaqi the common ancestor and hence respondent Nos 4 and 5 cannot inherit the plot and nor they were co-tenants nor they were in possession

3. The trial Court decreed the suit holding that Masit Ullah, father of respondent Nos. 4 and 5 was the son of Bulaki after believing the oral evidence and held that respondent Nos 4 and 5 were the co-tenants to the extent of 1/2 share hence the suit was decreed The petitioners preferred an appeal before the Commissioner which was dismissed and the Second Appeal filed by them also met the same fate

4. I have heard the learned counsel for the petitioners The learned counsel for the petitioners urged that the oral evidence on behalf of respondent Nos 4 and 5 has been incorrectly relied upon inasmuch as the parentage of respondent Nos 4 and 5 was to be proved and that could have been proved only by leading evidence of such witnesses who could have special means of knowledge about the family and relationship of the person and the opinion expressed by conduct as to the existence of relationship of any person was relevant. According to the learned counsel for the petitioners even though respondent Nos 4 and 5 examined three witnesses, namely Kallu Mohd Rafiq and Abdul Rahim who stated that the plaintiffs are sons of Masit Ullah alias Habib Ullah who was the son of Bulaki The statement of P W 2 Mohammad Rafiq was disbelieved on the ground that he has not given the source of knowledge about the fact he was deposing whereas the statement of Abdul Rahim was relied upon as he has stated that he has seen Masit Ullah and Bulaki namely father of respondent Nos 4 and 5 and their grandfather The learned counsel for the petitioner placed reliance on Dolgobinda Paricha v Nimal Charan Misra. AIR 1959 SC 914

5 The case of Dolgobinda Paricha v Nimal Charan Misra (supra) indicates the principles for applying the provisions of Ss 50 and 60 of the Indian Evidence Act, 1872 as to how the relationship can be proved and how far the statement of witnesses could be relevant. Even if the statement could be relevant, what would be the nature of the statement made The observation made by the Supreme Court at page 917 Para 6 is quoted below —

It states in effect that when the court has to form an opinion as to the relationship of one person to antoher the opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact The two illustrations appended to the section clearly bring out the true scope and effect of the section It appears to us that the essential requirements of the section are (1) there must be a case where the court has to form an opinion as to the relationship of one person to another (2) in such a case the opinion expressed by conduct as to the existence of such relationship is a relevant fact (3) but the

person whose opinion expressed by conduct is relevant must be a person who as a member of the family or otherwise has special means of knowledge on the particular subject of relationship in other words, the person must fulfil the condition laid down in the latter part of the section If the person fulfils that condition, then what is relevant is his opinion expressed by conduct Opinion means something more than mere retailing of gossip or of hearsay it means judgment or belief that is a belief or a conviction resulting from what one thinks on a particular question Now the belief or conviction may manifest itself in conduct or behaviour which indicates the existence of belief or opinion. What the section says is that such conduct or outward behaviour as evidence of the opinion held is relevant and may therefore be proved."

6 In view of the aforesaid observations made by the Supreme Court it is clear that the person whose opinion is expressed by conduct must have special means of knowledge about relationship and the opinion must be expressed by his conduct. The opinion expressed by conduct certainly means something more than mere retailing of gossip In the instant case P W 3 has stated that he was residing very close to the house of respondents Nos 4 and 5 and he has seen Masit Ullah @ Habib Ullah and his father Bulaki The witness was aged about 80 years and he resides just in the third house from the house of the grandfather of respondents Nos 4 and 5 Under these circumstances it cannot be said that he has got no special means of knowledge Even in the cross examination it was not suggested that he was deposing incorrectly or that he has no special means of knowledge nor it was suggested that what he was deposing was a just gossip or that he was not a reliable witness. Under these circumstances from the statement of P W 2 coupled with the statement of P W 1 I am satisfied, have fulfilled the conditions as indicated under Ss. 50 and 60 of the Indian Evidence Act.

7 Apart from the statement of P Ws. 1 and 3 there were other circumstances and evidence on which reliance has been placed. The reliance has been placed on Khatauni of 1348 F where the plaintiffs were recorded as co-tenants along with Smt. Sundaria, widow of Khuda Bux In view of these facts a number of circumstances have been considered to arrive at the conclusion that respondents Nos. 4 and 5 were the sons of Masit Ullah, who was the son of Bulaki, who was grandfather of the plaintiffs, who has acquired the plots

8 Further whether the plaintiffs were the sons of Masit Ullah and their father was the son of Bulaki, is a question of fact and all the Courts below including the trial Court Additional Commissioner and the Board of Revenue have held that the plaintiffs were the sons of Masit Ullah, who was the son of Bulaki, the common ancestor Even the plaintiffs father was recorded as co-tenant along with Mst. Sundarya, widow of Khuda Bux

9 In view of the discussions made above it is clear that the plaintiffs have correctly been held to be the sons of Masit Ullah, who was the son of Bulaki

10 The learned counsel for the petitioner has further urged that the petitioners were in exclusive possession hence the right of respondents Nos 4 and 5 came to an end as they remained out of possession for more than the prescribed period. The argument of the learned counsel for the petitioner proceeds on an erroneous assumption of fact in the instant case respondents Nos. 4 and 5 were claiming to be co-tenant along with petitioners Nos 1 and 2 and the possession of one co-tenant is the possession of all. Unless a plea of ouster was set up and proved it cannot be said that the right of respondents Nos. 4 and 5 came to an end I do not find any merit in the submissions made by the learned counsel for the petitioners.

11 In view of the facts stated above I do not find any merit in the writ petition and the same is dismissed summarily

Petition dismissed.

1986 ALL. L. J 465

B L YADAV J

Lakshmi Narain and another Petitioners v Deputy Director of Consolidation, Varanasi and others, Respondents.

Civil Misc. Writ Petn. No 3469 of 1975 D/ 17 5-1985

HC/LC/E154/85/JHS

(A) U P Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S 14 — Rights of petitioners coming to end by virtue of limitation of sixty years prescribed for redemption suit much prior to enforcement of Zamindari Abolition Act — Petitioners cannot claim benefit of S 14 (Para 12)

(B) Constitution of India, Art 226 — Question of fact — Point requiring investigation into questions of fact not raised in lower court — Point cannot be raised for first time in Art 226 petition AIR 1965 SC 241, AIR 1940 PC 116 and AIR 1965 SC 171, Followed. (Para 13)

Cases Referred	Chronological	Paras
1975 All WC 522		5 8
AIR 1973 All 577	1973 All LJ 381	5 9
AIR 1965 SC 171		13
AIR 1965 SC 241		13
AIR 1940 PC 116		13

R. N Singh, for Petitioners R. D Upadhaya, R R Upadhya G P Bhargava A N Bhargava and O S M Tripathi, for Respondents

ORDER — The present petition under Art. 226 of the Constitution of India is directed against the order dt. 13-12 74 passed by the Deputy Director of Consolidation, Varanasi The petitioner has prayed for a writ of Certiorari quashing the impugned order dt 13-12 74

2 The facts of the case are few and simple In the basic year plots Nos 5 6 7 and 617 were in dispute These plots were entered in the basic year in the name of the petitioners Father of respondents Nos 8 to 13 Ambika Prasad and father of respondents Nos 3 to 7 Mahavir were entered in Column 7 of the Khataunt, which obviously means as mortgagee

3 The petitioners filed an objection under S 9A(2) of the U P Consolidation of Holdings Act, (hereinafter referred to as the Act) with the allegations that the entries in the name of respondents were incorrect and fictitious hence they may be expunged Respondents denied the claim of the petitioners and alleged that they were bhumidhars and the plots were mortgaged with their ancestors and the ancestors of the petitioners did not file a suit for redemption of the mortgage within sixty years. Hence their rights came to an end and the respondents acquired bhumidari rights and they prayed to be recorded as Bhumidars

4 The Consolidation Officer by his order dated 3 1 66 decided the case in favour of the respondents and the Settlement Officer Consolidation by his order dated 25 10 68 allowed the appeal of the petitioners The revision of the respondents under S 48 of the Act was allowed by order dt 15 5 70 It is against this order that the present petition has been filed

5 This petition was listed before me for final hearing I have heard Sri R N Singh learned counsel for the petitioners and Sri G P Bhargava Senior Advocate for the respondents It was urged on behalf of the petitioners that the impugned order deserved to be quashed as based on the plea that within 60 years limitation no suit for redemption was filed and the Deputy Director of Consolidation has committed error apparent on the face of record in holding that the rights of the petitioners came to an end It was also urged that the mortgage was not proved He relied upon Shiv Shankar Singh v Board of Revenue 1975 All WC 522 and Shyam Ratti v Khalil, 1973 All LJ 381 (AIR 1973 All 577)

6 I have heard the learned counsel for both the parties and perused the impugned order and other orders including the evidence on record.

7 The Deputy Director of Consolidation by the impugned order after considering the entire evidence on record held that the mortgage was executed in 1884 A D Whether the mortgage was executed or not, that is a question of fact and the same involves no question of law Hence the same cannot be investigated by this Court under Art 226 of the Constitution of India Refusal to pay the mortgage money on the date specified in the mortgage deed under Art 148 of the Limitation Act, 1908 60 years limitation has been provided for redemption of the mortgage If within that 60 years no suit for redemption of the mortgage has been filed the rights of the mortgagor would become time barred, since 1884 till 1965 more than 60 years elapsed from the date for payment of mortgage money hence the rights of the petitioner became time barred.

8. Shiv Shankar Singh v Board of Revenue (1975 All WC 522) (supra) relied upon by the

learned counsel for the petitioner has no relevance to the facts of the present case In that case the question was whether the mortgagee of an occupancy tenant would mature rights by adverse possession against the mortgagor and whether a suit for the purpose would lie in the Civil Court or no The facts of the present case are however entirely different from the aforesaid case

9 Similarly in Shyam Ratn v Khalil (AIR 1973 All 577) (supra) relied upon by the learned counsel for the petitioner the facts are entirely different from the facts of the present case Hence the petitioner cannot derive any benefit out of that case

10 It has also been urged on behalf of the petitioners that the petitioners are entitled to the benefit of S 14 of the U P Z A and L R Act and hence the 60 years limitation would not apply against the petitioners.

11 This argument of the petitioners counsel is also not accepted The law of limitation is procedural law The limitation is fixed from the date when the suit is filed and it has nothing to do with the cause of action The law of limitation is not to create new rights but it is with the purpose as to within which limitation a particular suit is to be filed or a particular proceeding could be initiated. After the lapse of a prescribed period the rights of a person become time barred. In other words the right subsists but remedy is lost.

12 In case under the old law some rights of a person come to an end in that event even after the enforcement of a subsequent law the old rights cannot be revived nor the same could be created As the rights of the petitioners came to an end much prior to the enforcement of the U P Zamindari Abolition and Land Reforms Act on 1 7 52 by virtue of law of limitation of 60 years hence the petitioners cannot be held to be entitled to the benefit of S 14 of the U P Z A and L R Act

13 However there is another aspect of the matter The petitioners have laid no foundation for availing the benefit of S 14 of the U P Z A. and L. R. Act. If a particular fact has not been stated nor the foundation has been laid in the first court the same point would not be permitted to be urged for the first time before the Court under Art 226 of the Constitution of India particularly when requires investigation in the questions of fact. (See C Beepathuma v Velasari Shankara Narayana Kadambolithaya. AIR 1965 SC 241 Mosque Known as Masjid Shahidganj v Shiromani Gurdwara Prabandhak Committee AIR 1940 PC 116 (on page 121) and S S Gadgil v Lal & Co AIR 1965 SC 171) In view of the dictum laid down in these cases the aforesaid submission of the learned counsel for the petitioner is not acceptable

14 No other point has been urged before me and the writ petition is devoid of substance

15 In view of the discussions made above the writ petition lacks merit and is dismissed There shall however be no order as to costs

Petition dismissed.

1986 ALL L J 467

A BANERJI J

Parbati Devi Appellant v Smt Lalloo Devi and others Respondents

F A. F O No 61 of 1980 D 22 11 1984

(A) Succession Act (39 of 1925), Ss. 234 and 218 — Probate proceedings — Scope of enquiry

The question to be considered in a petition for the grant of probate is to see whether the testator had executed the will duly and in accordance with law In the probate proceedings the Court has to find out whether there were any suspicious circumstances in the execution of the will and if so whether the same had been allayed by the propounder There is no question of an heir or alleged heir of a legatee claiming a share in the property or filing an objection to the grant of probate unless it was claimed that the will was fraudulently drawn up or the testator had no power to execute a Will re the property and he she was deprived of his/her shares. In the normal course the heirs of a legatee would have no right to claim anything so long as the legatee was alive As soon as the probate or letters of Administration are granted a right crystalises in the hands of the legatee If any legatee dies, his heirs would be entitled to the

property which came to him as a legacy It is only then that the heirs can claim a share in that property The effort of Smt Parbati Devi in the present case to establish her right as an heir of Ram Prasad (a legatee under Will who died during pendency of probate proceeding) even before the grant of the probate was wholly misconceived, because such an application in a proceeding for the grant of probate is unwarranted The objection and the applications filed by her to establish that she was a daughter of Ram Prasad in these proceedings were wholly uncalled for

(Paras 8 10)

(B) Succession Act (39 of 1925), S 299 — Appeal under — District Judge has no power to review his order — Hence appeal against order of District Judge dismissing review application is not maintainable. (Para 12)

Faujdar Rai, for Appellant.

JUDGMENT — This appeal has been filed under S 299 of the Indian Succession Act challenging an order dated 27 10-1979 passed by the District Judge Azamgarh. This was an application for review of an order dated 15-9 1979 passed by the District Judge It was urged that an order passed by the District Judge in exercise of powers under the testamentary jurisdiction was appealable and as such the present appeal has been filed.

2 Learned counsel for the respondents contended that the appeal was not maintainable for the order rejecting the review application was not appealable under any provisions of the Indian Succession Act. It was further contended that Smt. Parbati Devi claimed to be a daughter of Sri Ram Prasad and after the death of Ram Prasad she was claiming a share in the property which had come to Ram Prasad from his mother Smt. Bharta Kuer through a Will. On behalf of the respondents it was urged that testamentary case in the Court of the District Judge was in respect of the estate of Smt. Bharta Kuer deceased mother of Ram Prasad and Smt. Parbati Devi, the appellant in this Court was not even mentioned as a legatee under the aforesaid Will and as such she had no right, title or interest to make the application in the proceedings before the testamentary Court.

3. I have heard the learned counsel for the parties, perused the material on record and I am satisfied that the appeal is wholly misconceived as also the application made by Smt. Parbati Devi in the Court below

4 The relevant facts are that Smt. Bharta Kuer executed a will on 26-6-1963 and sought to dispose of 5 of her properties two of which were situated in district Azamgarh and the other three in Calcutta Under the Will she gave one house property in Azamgarh to Smt. Lalloo Devi wife of Ram Prasad, her son. Another property at Azamgarh was bequeathed to her three sons Ram Prasad, Shiv Prasad and Ganga Prasad. One property in Calcutta was bequeathed to Ram Prasad and the other two properties in Calcutta were bequeathed equally to the other two sons, Shiv Prasad and Ganga Prasad On her death, Ram Prasad moved an application for grant of probate The matter was pending before the District Judge who was exercising the powers of testamentary court when Sri Ram Prasad died Smt. Lalloo Devi, widow of Ram Prasad then stepped in to pursue the petition for the grant of probate in place of Ram Prasad. While this porceeding was pending before the District Judge Smt Parbati Devi filed an objection 16/C2 dated 8 9 1978 in which she stated that Ram Prasad died on 31 8 1972 and she was one of his heirs and that Smt Lalloo Devi did not pursue the substitution proceedings in accordance with law and left her out. Further that Shiv Prasad and Ganga Prasad were in collusion with Smt Lalloo Devi and further proceedings in the matter of the grant of probate should only be done after the substitution proceedings had been done in accordance with law She also raised another objection that the Estate Duty certificate which had been filed in the case related to the estate of Smt Bharta Kuer and no certificate was filed in respect of the estate of Ram Prasad This objection of Smt Parbati Devi was rejected by an order dated 15-9-1979 The application 16/C2 was rejected. Thereafter Smt. Parbati Devi the appellant had moved a fresh application claiming that she was the daughter of Ram Prasad, a fact which she had not disclosed in her application 16/C2 In support of her stand that she was a daughter of Ram Prasad she filed some documentary evidence The learned District Judge considered the matter and held that Smt. Parbati Devi was not a daughter of Ram Prasad. Her application was accordingly rejected. After this order was passed, Smt. Parbati Devi moved

an application for the review of the above order and sought to file further evidence The court below rejected the application for review giving reasons It is against the above order that the present appeal has been filed

5 This appeal was admitted in this Court on 24-1 1980 and then an interim order was also passed requiring Smt Lalloo Devi to furnish security to safeguard the interest of Smt Parbati Devi when the probate is granted After this order was passed the District Judge held that the valuation of the property which was to come to Ram Prasad approximately at Rs 70 000/ and directed Smt Parbati Devi to furnish security in the sum of Rs 10 000/ It was held in the order dated 25-4-1980 that Ram Prasad had left behind two sons 3 daughters and a widow and if Smt Parbati Devi was considered to be a daughter of his her share would be at the most one seventh Thereafter the District Judge proceeded to consider the application for the grant of probate and by an order dated 19-9-1980 directed the grant of the probate

6 It is well established that objections to the grant of probate could be filed by a party interested therein by filing a caveat In the present case no such caveat was filed As a matter of fact there is nothing to show that the other legatees had filed any objection to the prayer made by Ram Prasad for the grant of the probate When Ram Prasad died an application for substitution was moved on behalf of Smt Lalloo Devi his widow As a matter of fact no substitution application was necessary Only a person named as an executor in the will could pursue the petition for the grant of probate Any other person could ask for the grant of Letters of Administration with the Will annexed Any one interested could have asked the testamentary court to treat him/her as the petitioner Smt Lalloo Devi s application was therefore to be considered as such The question of substitution of the heirs of the deceased Ram Prasad was therefore not warranted

7 All the heirs of Ram Prasad would get a share of the property bequeathed by Smt Bharta Kuer only after the will was upheld and the probate or Letters of Administration was granted and the legatees got their share They could not claim any share out of the Will of Smt Bharta Kuer for she had not mentioned any of the grandchildren as legatees. Judged on this ground Smt Parbati Devi was neither a legatee nor a person interested in the Will executed by Smt Bharta Kuer She had no locus standi Her remedy if any lay in filing a separate suit claiming to be an heir of Ram Prasad She had not instituted any such suit and the objections filed by heer 16/C2 were wholly misconceived

8 Any testator has a right to dispose of his property in any manner he likes He may bequeath his property to his heirs or even an outsider even excluding the heirs and legal representatives wholly or partly The question to be considered in a petition for the grant of probate is to see whether the testator had executed the Will duly and in accordance with law In the probate proceedings the Court has to find out whether there were any suspicious circumstances in the execution of the Will and if so whether the same had been allayed by the propounder There is no question of an heir or alleged heir of a legatee claiming a share in the property or filing an objection to the grant of probate unless it was claimed that the will was fraudulently drawn up or the testator had no power to execute a Will re the property and he/she was deprived of his/her share In the normal course the heirs of a legatee would have no right to claim anything so long as the legatee was alive It is only when the legatee died intestate that a right accrued in their favour in the property in the hand of the said legatee

9 In the present case when Smt Parbati Devi moved the objection 16/C2 Probate of the estate of Smt Bharta Kuer had not been granted Consequently the legatees had not received their legacy by then On the grant of the probate each legatee would be entitled to the property bequeathed in his/her favour The executor or the administrator as the case may be was enjoined under the law to administer property and give each legatee the property bequeathed under the Will

10 As soon as the probate or a letters of Administration are granted a right crystallises in the hands of the legatee If any legatee dies, his heirs would be entitled to the property which came to him as a legacy It is only then that the heirs can claim a share in that property The effort of Smt Parbati Devi in the present case to establish her right as an heir of Ram

Prasad even before the grant of the probate was wholly misconceived because such an application in a proceeding for the grant of probate is unwarranted The objection and the applications filed by her to establish that she was a daughter of Ram Prasad in these proceedings were wholly uncalled for If she had any right as an heir of deceased Ram Prasad her remedy lay in filing a suit for a declaration and for consequential relief For these reasons I find no merit in the objection and the applications moved by Smt Parbati Devi the appellant

11 The other question is about the maintainability of the appeal The present appeal has been filed under S 299 of the Indian Succession Act (hereinafter referred to as the Act) This section reads as follows

299 Appeals from orders of District Judge Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure 1908 applicable to appeals

12 It is evident from the above that every order passed by the District Judge is not appealable except those which are made in exercise of the powers conferred by the Act on him The appeal would of course lie to the High Court from the order of the District Judge in accordance with the provisions of the Code of Civil Procedure as applicable to appeals This means that once an appeal is filed in the High Court the provisions relating to appeals will govern it But the question is against what orders the appeal would lie? S 299 makes it clear that the order has to be one which is passed in exercise of the power conferred upon District Judge by the Act There is nothing in the Act which permits a review of an order by the District Judge Further there is no provision in the Act which permits the District Judge to entertain an application or decide the question of heir-ship of a deceased legatee In this view of matter the impugned order dated 27 10-1979 was not appealable and as such the present appeal is also not maintainable

13. For the reasons indicated above this appeal must fail and is accordingly dismissed but I leave the parties to bear their own costs

Appeal dismissed

1986 ALL L J 470

K C AGARWAL AND B L YADAV JJ

Anurag Kumar Barnwal and another Petitioners v State of U P and others Respondents

Civil Misc Writ Petn No 19532 of 1985 D/ 24-1 1986

Constitution of India, Art. 226 — Mandamus — Accused, petitioners alleged to have committed crime — Police investigation was in progress — Some facts disclosed to police — Arrest of petitioners or initiation of proceedings against them under Ss 82, 83 of Cr P C — High Court cannot interfere under Art 226 in the facts and circumstances (Criminal P C (2 of 1974), Ss 82, 83, 41)

Where it was found that some facts relating to the crime alleged to have been committed by the accused petitioners were disclosed to the police and the investigation was in progress and from the evidence it could not be said that there was no material or no suspicion against the petitioners it would not be proper for the High Court to interfere at such stage under Art 226 and it could not issue a writ of mandamus commanding the police authorities not to arrest the petitioners and not to initiate proceedings under Ss 82 and 83 Cr P C (Paras 8 11)

Cases Referred Chronological		Paras
AIR 1985 SC 330		16
AIR 1985 SC 1668	1985 Cri LJ 1858	7 14
AIR 1982 SC 949	1982 Cri LJ 819	6 10
AIR 1970 SC 786	1970 Cri LJ 764	6 13
AIR 1924 Mad 555	25 Cri LJ 563	6 12

T Rathore P C Chaturvedi and B B Paul, for Petitioner Standing Counsel, for Respondents

B. L. YADAV, J — The present petition under Arts. 226/227 of the Constitution has been filed by the petitioners seeking a relief for a writ of mandamus commanding the respondents not to arrest the petitioners or to initiate the proceedings under Ss 82 83 Cr P C (hereinafter referred to as the Code) in connection with Crime No 385 of 1985 P S Rohania, District Varanasi.

CD/CD/B467/86/VNP

2 The facts of the case lie in a narrow compass. One Sanjay Kumar Verma a student of B A Part II of the Banaras Hindu University was missing since the night of 21 22nd December 1985 a report was lodged by his father Vijai Kumar Verma about his disappearance on 22 12 85 at P S Deshaswamedh, Varanasi On the same day the village Chowkidar Kallu Ram also lodged a report (Annexure A to the petition) stating that a dead body of an unknown person was lying near the Katra of village Karsara Adalpura Varanasi Another report was lodged on 23 12 85 by the father of the deceased Sanjay Kumar Verma at P S Deshaswamedh Varanasi (Annexure B to the petition) In that report it was stated that his son Sanjay Kumar Verma was missing from the meeting of the students held in the night of 21 12 85 and he was last seen with Pappu alias Sunil Dubey and one Ganesh Dubey The deceased had taken his tea at the tea shop of one Munnu and here he kept his cycle and thereafter disappeared with the aforesaid Pappu and Ganesh Dubey It was prayed that legal proceedings may be initiated. On these reports the police started investigation and prepared an inquest report and sent the dead body for post mortem examination By that time the dead body could not be identified A copy of the General Diary of 23-12 85 has been filed as Annexure C to the petition.

3 One Sunil Kumar Dubey alias Pappu was arrested on 25-12 85 on the basis of the second report lodged by the father of the deceased According to the allegations made in para 7 onwards of the petition it was alleged that the petitioners have no connection with the alleged crime but the police wants to harass them and create some evidence against them and ultimately the petitioners apprehend that they would be implicated as accused and proceedings under Ss. 82, 83 of the Code could be initiated against them and they would be sent to jail The present petition was accordingly filed for issuing a writ of mandamus commanding the respondents not to arrest the petitioners or to initiate proceedings under Ss 82 83 of the Code

4 At the admission stage a counter affidavit was filed by Sri Surendra Pandey Station Officer who was deputed to investigate the present case and in Para 3(b) of the counter affidavit it was alleged that on 15-12 85 a quarrel has taken place between the deceased and Anurag Kumar Barnwal. petitioner 1 in the compound of the Vishwanath Temple situate in the campus of the Banaras Hindu University In that quarrel it was alleged that the deceased had given four slaps to Anurag Kumar Barnwal. petitioner 1 and the latter had given a threat of dire consequences In para 3(g) of the counter affidavit it has been stated that the deceased was taken on a scooter later on by Sunil Kumar Dubey alias Pappu assuring a compromise to be arrived at in the quarrel that had taken place on 15-12 85 and after sometime the deceased and Pappu alias Sunil Kumar Dubey boarded a jeep where four persons were already sitting The deceased and Pappu alias Sunil Kumar Dubey also occupied their seats in the same jeep which proceeded at a little distance It was further stated that the jeep came to the tea shop as the accused persons knew that the deceased was sitting there In para 9 of the counter affidavit replying para 7 of writ petition it has been stated that there was cogent and clear evidence to connect the petitioners with the crime and there was no question of any pressure The investigation was still in progress before the interim stay was obtained from this Court on 30-12 85 whereby the arrest of the petitioners was stayed and the same order was extended till the disposal of the writ petition

5 This petition came up for admission before us. The counter and rejoinder affidavits have been exchanged between the parties.

6 Sri V C Misra appearing for the petitioners urged that there was no material disclosing the offence on the basis of which the petitioners could be arrested. Even on the basis of material collected so far no reasonable suspicion arises nor the petitioners could be connected with the aforesaid crime It was accordingly urged that the proceedings for investigation may be quashed and the respondents may be directed not to arrest the petitioners in the aforesaid crime It was further urged that any police officer may without an order from a Magistrate and without a warrant arrest any person in view of the circumstances specified in S 41 of the Code only when some credible information has been received or a reasonable suspicion exists of the accused having been concerned in any cognizable

offence He urged that in view of S 50 of the Code grounds of arrest have to be communicated with particulars of the offence for which the person is arrested without warrant. S 157 of the Code was also referred which provides procedure for investigation. Learned counsel for the petitioners strongly placed reliance on State of West Bengal v Swapan Kumar Guha, AIR 1982 SC 949 S N Sharma v Bipen Kumar Tiwari, AIR 1970 SC 786 and In re Appaswamy Mudali, AIR 1924 Mad 555

7 Sri P C Srivastava, learned Standing Counsel appearing for the respondents urged that the investigation was still in progress and the police was collecting evidence and material. In case no material was found against the petitioners, they would not be arrested and ultimately a final report can also be made against them. He urged that at this stage there was nothing to indicate that there was no material against the petitioners He further urged that the writ petition is still premature He placed reliance on S 41 of the Code and urged that even on reasonable suspicion any police officer can arrest any person without warrant, he similarly referred to S 50 of the Code which enacts that the person arrested has to be informed of the grounds of arrest and also that he can be released on bail when a case for the same was made out. He placed reliance on Eastern Spinning Mills Shri Virendra Kumar Sharda v Sri Rajiv Poddar AIR 1985 SC 1668

8 Having heard the learned counsel for the parties we are of the opinion that this petition is without substance The point for consideration is as to whether at this stage when the investigation is in progress can a writ of mandamus be issued commanding the respondents not to arrest the petitioners and not to initiate the proceedings under Ss 82 83 of the Code From the averments made in the counter affidavit filed by Sri Surendra Pandey Station Officer P S Deshaswamedh, district Varanasi, we are satisfied that the police is investigating the matter It is a fact that the dead body could not be identified till the post mortem examination was conducted. This fact was mentioned in the General Diary as well. There appears to be some extra judicial confession as mentioned in para 3(p) of the counter affidavit and in his confession Pappu alias Sunil Dubey has told the investigating officer in detail the manner in which the murder was committed. Further on pointing out of the accused Rajesh the cord which was used in strangulating the deceased was recovered from the field in which the dead body of the deceased was thrown The cord had blood stains also We have perused the post mortem examination and it appears that the blood was oozing from the nostrils of deceased and some drops of the blood might have reached the cord as well. In this way the investigation is in progress and at this stage it cannot be said that there was no material or no suspicion against the petitioners

9 Section 41 of the Code as relied upon by both the sides enacts the manner as to how the police may arrest without warrant. It has been provided that a police officer may without an order from a Magistrate and without a warrant, arrest any person if he is concerned in any cognizable offence, or against whom a reasonable complaint has been made or some credible information has been received or a reasonable suspicion exists of his having been so concerned. It is thus clear that any police officer can arrest any person, provided there exists some reasonable suspicion about his being concerned in any cognizable offence It is convenient at this stage to state some provisions of the Code Once an F I R has been lodged in view of S 154 of the Code the police officer shall enter the substance of the information in a book to be kept by such officer as prescribed by the State Government and would refer the information to the Magistrate and when it is a non cognizable offence the police officer would not investigate the case without an order of the Magistrate But in respect of a cognizable offence in view of S 156 of the Code any officer in charge of the police station may investigate without any order of the Magistrate S 157 of the Code provides procedure for investigation, which enacts that on the receipt of an information the police officer shall forthwith send a report to the Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall depute one of his subordinate officers to proceed to the spot, to investigate the facts and circumstances of the case and, if necessary to take measures for the discovery and arrest of the offender

10 State of West Bengal v Swapan Kumar Guha, (AIR 1982 SC 949) (supra) was a case arising out of the provisions of the Prize Chits and Money Circulation (Banning) Act, 1978 Some secret informations were received that Sanchaita Investments of 5-6 Fancy Lane Calcutta was carrying on business of promoting and/or conducting prize chit in violation of the provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short the Prize Chits Act) An enquiry was held secretly to verify the correctness or otherwise of the said information and the enquiry revealed that the said Sanchaita Investments was a partnership firm and had been offering fabulous interest and it was alleged that the aforesaid Sanchaita Investment was carrying on business in violation of S 3 Prize Chits Act, which was punishable under S 4 of the said Act Necessary actions were accordingly demanded against the aforesaid offenders. On those facts whether the offence was disclosed under S 4 Prize Chits Act, the Supreme Court held in para 64 as under —

If an offence is disclosed, the High Court under Art. 226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed if, however the materials do not disclose an offence no investigation should normaly be permitted. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. But it cannot be said that an investigation must necessarily be permitted to continue and will not be prevented by the court at the stage of investigation"

Further in para 65 the Supreme Court held as follows —

Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual"

11 It was accordingly evident under the facts of that case that if the offence was disclosed the High Court would not interfere with the investigation into the case and will permit the investigation to be completed Whether the offence has been disclosed or not must certainly depend on the facts and circumstances of each case In the instant case in view of the extra judicial confession and other progress and the recovery of cord, etc we are satisfied that some facts have been disclosed and the police in all earnestness would complete the investigation at the earliest and would come to a positive conclusion. It is not thus proper at this stage to interfere under Art. 226 of the Constitution.

12 In re Appaswamy Mudali (AIR 1924 Mad 555) (supra) was a case on different facts There an offence under S 225 I P C was alleged to have been made out against the accused But in that case also no attempt was made to justify the arrest and under S 55(c) (as held on page 557) it was held that the prosecution has proved that the constable has authority to arrest the man. This case we are of the opinion would not help the petitioners.

13 In re S N Sharma, (AIR 1970 SC 786) (supra) was a case under the old Code and the provisions of S 159 were considered by the Supreme Court and it was held that that was a section meant to give to the Magistrate power of directing investigation in a case where the police decide not to investigate under the proviso to S 157(1) and in that event he was given power to proceed and to hold preliminary enquiry as the circumstances of the case may require It was further held under para 7 page 789 that the Code (old) gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed. In appropriate cases an aggrieved person can

always seek a remedy by invoking the power of the High Court under Art 226 of the Constitution under which if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide the High Court can always issue a writ of mandamus restraining the police officer from misusing the legal power In the instant case we are satisfied that it has not been proved that the power of investigation has been exercised by the police officer mala fide Further the police has got unfettered power of investigating all cases where they are satisfied that a cognizable offence has been committed This case also would not be of any assistance to the petitioners

14 In re Eastern Spinning Mills Shri Virendra Kumar Sharda, (AIR 1985 SC 1668) (supra) as relied upon by Sri P C Srivastava learned Standing Counsel, it was held under para 4 that except in exceptional cases where non interference would result in miscarriage of justice the Court and judicial process should not interfere at the stage of investigation of an offence In the instant case also it is clear that the investigation is still in progress and it is not such a case where non interference would result in miscarriage of justice

15 It would not be out of place to mention that the Code of Criminal Procedure 1974 provides a detailed machinery about investigation and consequent arrest of the offenders. It may be that the material collected may not be of any convincing nature and that may be rejected later on by the courts seized with the matter Even after arrest, it is needless to say that the petitioners would have an opportunity to file an application for bail. Even after the conclusion of sessions trial the petitioners would have a right of appeal

16 It appears that the present petition has been filed with a view to obtain ad interim stay so that the arrest of the petitioners may be stayed. In Asst. Collector of Central Excise v Dunlop India Ltd AIR 1985 SC 330 it was held that the remedy under Art. 226 of the Constitution is not meant to short circuit and circumvent the statutory provisions of procedures It is only where the statutory remedies are entirely ill suited to meet the demands of the external situation, such as where the vires of a statute have been challenged, in that case recourse may be had to Art. 226 of the Constitution However this remedy should not be availed of just for obtaining interim orders

17 It is pertinent to mention the scope and circumstances in which a writ of mandamus as prayed for by the petitioners can be issued. By now it is well settled that a writ of mandamus is issued to compel performance of a positive and plain duty It is issued on the application of one who has a clear legal right to demand such performance and who has no other adequate remedy In other words where any public authority or officer is entrusted with an absolute (not discretionary) duty to perform certain functions or duty or to refrain from performing the duty and on demand being duly made he refuses to peform it, or forbears from performing the duty any person who has got a legitimate and sufficient interest in the performance of or forbearance from performance may apply to the High Court for a writ of mandamus, provided he has no other remedy equally convenient beneficial and effectual open to him (i e by way of appeal or representation or by some other mode) Seeking forbearance from duty requires more cogent and positive proof and allegations and only then the authority concerned can be directed to forbear from performing the duty or doing something against the petitioners In the instant case what the petitioners are seeking is that the respondents may be directed to forbear from performing their duty of making investigation collecting evidence and proceeding against the petitioners. In case the petitioners would have prayed that the respondents may be compelled to perform their particular duty which they were refusing to perform the matter would have been different. The petitioners, in fact, are seeking the negative aspec[illegible] for which we are [illegible] has been made ou[illegible]

18 In view of the [illegible] we are of the opin[illegible] interference has been made out either to stay the investigation in the aforesaid crime or to stay the arrest of the petitioners It [illegible] be out of place to mention even and [illegible] of the Constitution it has been provided that no person shall be deprived of his life and personal liberty except according to the

procedure established by law In the instant case the Code of Criminal Procedure contains such procedure established by law The investigation is proceeding under that Code and the petitioners have got sufficient remedy provided therein to safeguard their interest We are confident that the police would investigate the matter very sincerely and earnestly and would conclude the same at the earliest. In case no positive evidence is collected against the petitioners, they would not be implicated or sent to jail.

19 In view of the discussions made hereinabove we find no good reasons for interference under Art. 226 of the Constitution. The petition accordingly fails and it is dismissed summarily

Petition dismissed.

1986 ALL. L. J 475

A. BANERJI AND V K KHANNA, JJ

M/s. Janki Prasad and Sons, Petitioner v Nagar Mahapalika, Kanpur Respondent.

Civil Misc Writ Petn. No 319 of 1985 D/ 10-10-1985

U P Nagar Mahapalika Adhiniyam (2 of 1959), S 172(2)(b) — U P Nagar Mahapalika Octroi (Second Amendment) Rules (1984), R 18(2)(9) — Charging of Octroi on consignments — Mixed consignment — Part of consignment meant for consumption outside Mahapalika limits — Octroi cannot be charged on such part — Provisions of R. 18(2)(a) cannot nullify provisions of S 172(2)(b)

Under S 172(2)(b) Octroi can be charged from a person who brings in any goods or animals within the limits of the Mahapalika for its consumption use or sale therein The provisions of R. 18(2)(a) providing for non grant of transit pass facilities for mixed consignment cannot nullify the provisions of S 172(2)(b) Consequently in case of mixed consignments the goods which were meant for consumption, use or sale outside the Mahapalika limits cannot be subjected to Octroi. Of course, the person taking out such goods from the Railway premises should be able to satisfy the officials at the barrier through proper papers in his possession that the goods are not meant for consumption use or sale within Mahapalika limits of City

(Paras 3 4)

Rajesh Kumar Agrawal, for Petitioner
Standing Counsel, for Respondent.

A. BANERJI, J — The petitioner is a registered firm of Lucknow and is working as handling agent of Mathar and Century Cement in the district of Kanpur The petitioner receives cement from the factory in Mathar part of which is distributed to the dealers in Kanpur and the rest outside the district of Kanpur The cement bags are received at the Goods shed, Kanpur Railway Station and carried from there to the respective districts/dealers as intimated by the Principal. Admittedly part of the goods received is also carted to the dealers located within the limits of the Nagar Mahapalika, Kanpur The petitioner has come with the allegation that the Nagar Mahapalika charges octroi for the cement no sooner it leaves the goods shed of the railway station even though some of the consignments are transported for dealers outside the limits of the Nagar Mahapalika and some are carted to other districts. The petitioner's grievance is that the Nagar Mahapalika has no right to charge octroi for the goods which are not being taken to dealers within the territorial limits of the Mahapalika The petitioner relies on the provisions of S 172(2)(b) of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 which empowers the Mahapalika to impose octroi in respect of goods brought within the city for consumption, use or sale therein. The petitioner alleged that the octroi barriers of the Mahapalika prevent the vehicles of the petitioner from carting the cement to dealers outside the territorial limits of the Mahapalika and to dealers in other districts without payment of octroi. The further allegation is that the petitioner is not the owner of the cement bags but merely handling agent on behalf of the Principal and carries the cement bags to the various dealers and stockists. The prayer is that suitable orders or directions may be issued restraining the Nagar Mahapalika from charging octroi on such consignment of cement

2 The stand taken by the Nagar Mahapalika is that for the cement bags which

come to Kanpur Railway station, the petitioner is liable to pay octroi unless it is satisfactorily established that the consignment in the truck is meant for consumption outside the district of Kanpur Their further stand is that under R 18(2)(a) of the Nagar Mahapalika Octroi (Second Amendment) Rules 1984 passes for carrying consignment of goods meant for consumption outside the limits of Mahapalika are granted but no transit pass facilities are to be extended to the mixed consignment i e those partly intended for the city and partly for going out of the city Since the consignment that is received at the goods-shed of Kanpur Railway station is a mixed consignment the Mahapalika is not obliged to exempt payment of octroi for the taking out of such consignment from the Railway station In other words the Nagar Mahapalika claimed that the petitioner is not entitled to any relief in the writ petition as the consignments received at the Railway station are mixed consignments partly for consumption within the Mahapalika limits and partly for consumption outside the city

We have perused the affidavits filed by the parties in this case and have also heard the learned counsel for the parties. We propose to dispose of this writ petition at the admission stage with the consent of the parties

3 Section 172(2) of the Nagar Mahapalika Adhiniyam 1959 reads as follows —

(2) In addition to the taxes specified in sub-sec (1) the Mahapalika may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes namely —

(a)

(b) an octroi on goods or animals brought within the city for consumption use or sale therein

(c) a tax on goods exported from or imported into the city in which an octroi was in force at the commencement of the Constitution of India

(d) to (j)

Provided that octroi on goods under cl (b) and a tax under cl (c) shall not be levied at the same time

3 The Mahapalika taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye laws framed thereunder "

According to the above provisions octroi can be levied only on the goods which are brought within the Municipal limits for consumption use or sale In other words the goods which are not brought within the city for consumption use or sale in the city (i e within the territorial limits of the Mahapalika) cannot be subjected to octroi So long as the goods come by rail and are unloaded within the Railway premises these would not be subjected to octroi until they are taken out of the Railway premises When the goods are taken out of the Railway premises octroi will be charged at the octroi barrier unless it is satisfactorily established that the goods which are being taken out of the Railway premises are meant for consumption use and sale outside the territorial limits of the Mahapalika The burden to prove that the goods are not meant to be consumed within the Mahapalika limits is on the person who is taking out the goods from the Railway premises In other words such a person has to establish from the papers in his possession that the goods are meant for use or sale outside the Mahapalika limits It is therefore evident that under S 172(2)(b) octroi can be charged from a person who brings in any goods or animals within the limits of the Mahapalika for its consumption use or sale therein Goods or animals arriving at the Railway premises are not subjected to octroi unless the goods leave the Railway premises

4 The next question whether R 18(2)(a) of the Octroi Rules in so far as it provides for non-grant of transit pass facilities for mixed consignments is concerned we feel that the above provision cannot nullify the provisions of S 172(2)(b) of the Adhiniyam The goods which are meant for consumption use or sale outside the Mahapalika limits of Kanpur cannot be subjected to octroi Of course the person taking out such goods from the Railway premises should be able to satisfy the officials at the barrier through proper papers in his possession that the goods are not meant for consumption use or sale within Mahapalika limits of Kanpur But goods meant for consumption use or sale within the Mahapalika are liable to tax When a rake of cement comes by rail the consignee should be able to establish how much of it is for sale or use in the Mahapalika limits and what quantity has to go out of the said limits

5 Reference may be made to the provisions of Rule 18(2)(d) of the Nagar Mahapalika Octroi (Second Amendment) Rules 1984 which require the owner or the person in charge of the goods to make a declaration in a prescribed form on the basis of Invoice Beejak or Challan He has to comply with the above rule If the requisite papers are not there Mahapalika octroi barrier would be justified in refusing to issue the transit pass

6 However it must be made clear that the consignment taken out from the Railway premises to the octroi barriers on a goods carrier should be promptly cleared by the octroi barriers if they are satisfied from the papers presented by the carriers pertaining to such consignment If the relevant papers indicate that the consignments are meant for outside city we see absolutely no reason for detaining such goods for an indefinite length of time at the octroi barriers It is the duty of the Mahapalika to see that its octroi barriers do not operate as hindrance to the growth of trade and commerce The purpose of the octroi is to collect revenue for the Mahapalika but at the same time it must be borne in mind that undue delay or indefinite stoppage of goods carriers at the octroi barriers adjoining the Railway goods-shed may unnecessarily increase the cost to the dealers When there is concerted effort by the Government to keep down the prices every effort must be made by the local authorities to see that the costs of carting do not escalate by indefinite stoppage of carriers at the octroi barriers The dealing at the barriers must be efficient and prompt At the same time any person trying to evade payment of octroi should be suitably dealt with

7 The consignments for which octroi has been deposited by the petitioner so far may be examined in the light of the principles stated above If the consignments were meant for consumption within the city they would be liable to octroi and no question of refunding the said amount would arise but if those consignments were meant for consumption outside the Mahapalika limits then such amount must be refunded by the Nagar Mahapalika Kanpur within six weeks of the presentation of a certified copy of this order

8. This writ petition is accordingly disposed of In the circumstances of the case there will be no order as to costs

Order accordingly

1986 ALL. L. J 477

S K DHAON AND S K MOOKERJI JJ

Sahab Singh Petitioner v Kashi Nath Mishra and others Respondents

Civil Misc Writ Petn No 14881 of 1984 D/ 3-10-1985

(A) U P Co-operative Societies Act (11 of 1966), S 29(4) — Order passed by Deputy Registrar replacing petitioner-Administrator of Bank with the District Magistrate — It is in exercise of powers of Registrar, and not in interference with civil right of petitioner — Termination, not wrongful — Question of awarding damages to petitioner does not arise.

Where the petitioner Administrator of Co-operative Bank was replaced with the District Magistrate as an Administrator by the Deputy Registrar Co-operative Societies on grounds of unsatisfactory performance of petitioner as an Administrator of the Bank by exercise of this power to change the Administrator there is no interference with any right including civil right of the Administrator (Para 10)

An Administrator who has accepted the office cannot afterwards complain his replacement by another person He cannot be permitted to wriggle out of the statutory condition that the power to change an Administrator is exercisable by the Registrar from time to time The only exception is where the condition prescribed by the statute is void as being inconsistent with some Constitutional provision The foundation of the exception is not the choice of the holder of the office but the invalidity of the provision itself To put it differently the petitioner cannot claim any right to continue to hold the office once the power reserved in the Registrar to change him is exercised It is implicit in S 29 that the right if any acquired under the appointment to the office is subject to determination by the Registrar Such a precarious right is created from the very beginning And if the right itself

is determinable under the statute there is really no interference with it The Registrar has an undoubted power to change the Administrator from time to time By the exercise of this power there is no interference with any right including civil right of an Administrator Even if there is such an interference it is a necessary incidence to the exercise of the statutory power Further assuming a contract of employment comes into existence by the appointment of a particular person as an Administrator the term or condition is that employment is terminable by the Registrar unilaterally The Registrar exercises his option and terminates the employment Such a termination cannot be termed as wrongful Therefore the question of awarding any damages to Administrator does not arise (Paras 9 10 11)

(B) U P Co-operative Societies Act (11 of 1966), Ss. 29(4)(5)(6), 38(3), (4), (5), (6) — Order passed by Registrar replacing petitioner Administrator of Bank with District Magistrate — Petitioner not afforded any opportunity of hearing — Principle of natural justice not violated as statute does not contemplate giving of an opportunity of being heard when Registrar is taking action under these sections — Petitioner not even entitled to post decisional hearing

Where Registrar passed an order replacing petitioner Administrator with District Magistrate the petitioner was not entitled to any opportunity whatsoever of a hearing before his removal from office even though order has effect of visiting him with civil consequence

It is clear from the scheme of S 35 that the Legislature has contemplated the application of the doctrine of natural justice only when the Registrar is exercising his powers of superseding the existing Committee of Management under sub-sec (1) This doctrine has not been made applicable when the Registrar is exercising power under sub-sec (4) therefore reading sub-secs (1) and (4) of S 35 together it cannot be successfully contended that even in the absence of specific words as found in sub-sec (1) the Legislature intended that even at the stage of exercising powers under sub-sec (4) the Registrar should afford an opportunity of hearing to the committee or any member thereof or the Administrator or administrators appointed under cl (a) or (b) of sub-sec (3) On the contrary the presence of express words in sub sec (1) and observance of complete silence in sub sec (5) lead to the irresistible conclusion that by necessary implication the doctrine of natural justice has been made inapplicable in sub sec (4)

In sub secs (4) (5) and (6) of S 29 the Legislature has adhered to the same policy which is evolved in sub secs (3) (4) (5) and (6) of S 35 If the legislature excludes the applicability of the doctrine of natural justice when the Registrar exercises power under sub sec (4) of S 35 there is no reason to hold that it intended the application of the said doctrine when the Registrar exercises power under cl (b) of sub sec (4) of S 29 On the other hand in the absence of any indication express or implied in cl (b) of sub sec (4) it will be reasonably inferred that the Legislature has stuck to the policy Further the petitioner was not entitled even to post-decisional hearing The purpose of post-decisional hearing is to restore the status quo as obtained on date of an order or action Such a restoration is not countenanced by provisions of S 29 The power is exercisable from time to time There is nothing in statute to prevent the Registrar to make yet another change and to continue the process of change The only rider is that his action should be bona fide and actuated by desire to preserve and advance the interest of public Therefore no useful purpose would be served by giving opportunity of post decisional hearing to petitioner

(Paras 15 16 17)

(C) Constitution of India, Arts 226 and 14 — U P Co-operative Societies Act (11 of 1966), S 29(4)(b) — Order passed by Registrar removing petitioner Administrator from his office and replacing with District Magistrate — Order passed on basis of honest and bona fide belief of Registrar that continuance of petitioner as an Administrator was not in interest of Bank — Registrar cannot be said to have exercised power arbitrarily (Para 19)

Cases Referred	Chronological	Paras
AIR 1985 SC 1416 Lab IC 1393	(1985) 3 SCC 398	1985 14
AIR 1981 SC 818	(1981) 2 SCR 533	14
AIR 1978 SC 597	(1978) 1 SCC 248	14
AIR 1978 SC 851	(1978) 2 SCR 272	13 14

AIR 1970 SC 150 (1969) 2 SCC 262 14
AIR 1967 SC 1269 (1967) 2 SCR 625 14

S K Varma for Petitioner Standing Counsel for Respondents

S K DHAON, J — This petition at the instance of the member of a State Legislature stems from his appointment as an Administrator of the District-Co-operative Bank Ghazipur a co-operative Society under sub section (4) of S 29 of the U P Co-operative Societies Act 1965 (hereinafter referred to as the Act) An order replacing the petitioner with the District Magistrate as an Administrator is being impugned

2 The Deputy Registrar Co-operative Societies acting as the Registrar has passed the impugned order In it it is merely recited that it is in the interest of the Bank that the District Magistrate shall take over from the petitioner In accordance with the direction of this Court the Deputy Registrar has filed a counter affidavit In it the averments made are these During the tenure of the petitioner the target of the short term as well as the medium term loans could not be achieved For short term loans the achievement was Rs 2 81 lacs as against a target of Rs 7 50 lacs For medium term loans the achievement was Rs 23 34 lacs as against the target of Rs 80 lacs The petitioner made fresh appointments in the Bank after removing the old employees in violation of the Rules The petitioner recovered a sum of Rs 57 367/- from the Bank to cover the cost of petrol during the year 1983-84 He sanctioned a sum of Rs 6 146/- as his own travelling allowance He used the jeep and the car of the Bank for performing certain journeys between Ghazipur and Medinipur a distance of about 11 kilometers and he also realised rickshaw charges for the same journey Serious financial irregularities were detected in his T A bills A circular was issued on 20th September 1984 by the Registrar of the Co-operative Societies in which some guidelines for the appointment of an Administrator were given One of them was that a person who had been convicted of any offence or found guilty by competent Court of having committed any offence or against whom some criminal case was pending in a competent Court should not be appointed as Administrator After the receipt of the said guidelines it was found that a Criminal Case No 197 of 1976 under Ss 302 307 and 149 of the Penal Code was pending in the Court of the Ist Additional District Judge Ghazipur against the petitioner The impugned order was passed in the interest of the Bank as the unsatisfactory performance of the petitioner as an Administrator of the Bank was the main basis of his change

3 The impugned order is assailed on the grounds (1) Principles of natural justice violated (2) power of removal exercised arbitrarily (3) clause (b) of sub-sec (4) of S 29 of the Act is in so far as the conferment of power to change an Arbitrator from time time hit by Art. 14 of the Constitution and is void and (4) exercise of power by the Deputy Registrar is mala fide We shall deal with these contentions seriatim.

4 Is any statutory or civil right created in the Administrator to continue in office? On the reply to this question will depend the answer to the first submission. A brief reference to the relevant provisions may be made Clauses (e) (o) and (r) to S 2 respectively define Committee of Management Officer of a Co-operative Society" and Registrar" The first expression means the Committee of a Co-operative Society by whatever name called, to which the management of the affairs of the Society is entrusted under S 29 The second expression means the President, Vice-President, Chairman, Vice-Chairman, Secretary Member of the Committee of Management, Treasurer Liquidator Administrator or any other person employed by Co-operative Society whether with or without remuneration to carry on the business of the society or to supervise its affairs. The last expression means the person for the time being appointed as Registrar of the Co-operative Societies under sub-section (1) of S 3 and includes any person appointed under sub-sec (2) of that section when exercising all or any of the powers of the Registrar Section 3 empowers the State Government to appoint a person to be a Registrar of Co-operative Societies for the State It also empowers the State Government to appoint other persons to assist the Registrar and by general or special order confer on any such person all or any of the powers of the Registrar In S 7 the Registrar is empowered to register a society and its by-laws. A registration certificate is issued by the

Registrar (Section 8) Section 9 provides that the registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to hold the property enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. Sub-section (2) of S 27 empowers the Registrar to remove or expel a person from the membership of a Co-operative Society in certain situations Chapter IV of the Act deals with the Management of Societies S 28 provides that the final authority of a Co-operative Society shall vest in the general body of its members in general meeting Section 29 provides that the management of every Co-operative Society shall vest in a Committee of Management constituted in accordance with the Act, the Rules and the bye-laws which shall exercise such powers and peform such duties as may be conferred or imposed by the Act, the rules and the bye-laws The term of the elected members of the Committee of Management shall be such as may be provided in the Rules or the bye-laws of the Society A duty has been cast on the Committee of Management to take steps before the expiry of its term for election of members of the Committee of Management However it is open to the State Government to direct that in respect of a certain class of Co-operative Societies, the superintendence, direction, control and conduct of elections of the members and Chairman and Vice-Chairman of the Committee of Management shall vest in the Registrar Sub-section (4) of S 29 provides that where for any reason whatsoever the election of the elected members of the Committee of Management has not taken place or could not take place before the expiry of the term of elected members the Committee of Management shall, notwithstanding anything to the contrary in the Act or the rules, or the bye-laws of the society cease to exist on the expiry of such term. The Registrar is empowered to appoint an Administrator for the management of the affairs of the society He has also been empowered to change the Administrator from time to time The functions of the Administrator are subject to any direction which the Registrar may give from time to time. Section 35 empowers the Registrar to either supersede or suspend a Committee of Management. In the event of the supersession of the Committee of Management the Registrar is empowered to appoint in its place a new committee consisting of one or more members of the Society or an Administrator or Administrators who need necessarily be members of the Society The Registrar is empowered to change a Committee or any members thereof or the Administrator or Administrators at his discretion The Committee the Administrator or Administrators are enjoined to exercise powers subject to any direction which the Registrar may issue from time to time Section 64 empowers the Registrar to audit the accounts of every Co-operative Society In S 65 the Registrar is empowered to hold inquiry into the constitution working and financial condition of a co-operative Society Under S 66 the Registrar has the power to inspect books, cash and other properties of the Society Section 69 empowers the Registrar to make an order directing the Society or its Officers to take such action to remove the defects detected in the audit, inquiry inspection etc Ss 70 and 71 clothe the Registrar with the powers of adjudicating disputes Section 72 arms the Registrar with the power of directing the winding up of a co-operative society In section 73 he can appoint a Liquidator

5 From a conspectus of the aforementioned provisions it is apparent that the Legislature has conferred administrative supervisory and even quasi judicial powers on the Registrar He is a powerful officer The machinery of the Act revolves round him and the State Government exercises control over the Co-operative Societies through him

6 We have already seen that the Committee of Management ceases to exist on the expiry of the term of its elected members Clause (b) of sub-section (4) minus the proviso and the Explanation to it and sub section (5) of S 29 may be extracted —

(b) On or as soon as may be after the expiry of such term the Registrar shall appoint an Administrator for the management of the affairs of the society until the reconstitution of the Committee of Management in accordance with the provisions of this Act the rules and the bye laws of the society and

the Registrar shall have power to change the Administrator from time to time

(5) The Administrator appointed by the Registrar under sub-section (4) shall subject to any directions which the Registrar may from time to time give have the power to perform all or any of the functions of the Committee of Management or of any officer of the society and shall be deemed for all purposes under this Act the rules and the bye laws of the society to be the Committee of Management

7 In the scheme of S 29 the Registrar is the sole authority to appoint any person as an Administrator There is no limitation to the exercise of his power so far as the choice of an appointee is concerned No qualification for such an appointment is laid down by or under the Act No remuneration is prescribed for an Administrator appointed under S 29 The Administrator has no fixed term He is there in a stop-gap arrangement He has to go out the moment a Committee of Management is reconstituted and it is his duty to arrange for such a reconstitution within a period of one year from the date of his appointment

8. In law no distinction exists between the termination of service under the term of contract and that in accordance with the terms and conditions of service A fortiori the same principle should apply to an appointment to an office Section 29 provides the terms and conditions They are The Registrar shall have the power to change an Administrator from time to time the Administrator shall subject to any direction which the Registrar may from time to time give perform certain functions and the Administrator shall within one year from the date of his appointment arrange for the reconstitution of the Committee of Management

9 An Administrator who has accepted the office cannot afterwards complain his replacement by another person He cannot be permitted to wriggle out of the statutory condition that the power to change an Administrator is exercisable by the Registrar from time to time The only exception is where the condition prescribed by the statute is void as being inconsistent with some Constitutional provision The foundation of the exception is not the choice of the holder of the office but the invalidity of the provision itself To put it differently the petitioner cannot claim any right to continue to hold the office once the power reserved in the Registrar to change him is exercised

10 It is implicit in S 29 that the right, if any acquired under the appointment to the office is subject to be determined by the Registrar Such a precarious right is created from the very beginning And if the right itself is determinable under the statute there is really no interference with it The Registrar has an undoubted power to change the Administrator from time to time By the exercise of this power there is no interference with any right including civil right of an Administrator Even if there be such an interference it is a necessary incidence to the exercise of the statutory power

11 Can an Administrator recover damages for wrongful removal from office? If yes the petitioner surely acquired a right to continue in office An agreement may come into existence either by act of parties or by operation of law Likewise the terms of conditions of an agreement may have their origin either in contract or in a statute or provisions having the force of a statute Assuming a contract of employment comes into existence by the appointment of a particular person as an Administrator the term or condition is that the employment is terminable by the Registrar unilaterly The Registrar exercises his option and terminates the employment Such a termination cannot be termed as wrongful Therefore the question of any damages being awarded to the Administrator does not arise

12. The Deputy Registrar in the impugned order merely replaced the petitioner with the District Magistrate The petitioner was not entitled to any opportunity whatsoever of a hearing before his removal from the office In his counter-affidavit the Deputy Registrar has under the orders of this Court given reasons for exercising the power of removing the petitioner Undoubtedly unsavoury allegations have been made against the petitioner and he was not afforded any opportunity to give his version to those allegations Violation of the principles of natural justice is being complained

as according to the petitioner the impugned order coupled with the allegations made in the counter affidavit entail civil consequences The petitioner cannot succeed without establishing that he acquired a civil right by virtue of his appointment as an Administrator

13 In Mohinder Singh Gill v The Chief Election Commr New Delhi AIR 1978 SC 851 Black s Legal Dictionary has been pressed into service for ascertaining the meaning of civil rights In the said case it is mentioned that Civil Rights are such as belong to every citizen of the State or Country or in a wider sense to all its inhabitants and are not connected with the organisation or administration of government They include the rights of property marriage protection by the laws freedom of contract trial by jury etc Or as otherwise defined civil rights are rights appertaining to a person in virtue of his citizenship in a State or community Rights capable of being enforced or redressed in a civil action Also a term applied to certain rights secured to citizens of the United States by the Thirteenth and Fourteenth amendments to the Constitution and by various acts of Congress made in pursuance thereof In the same case it was observed that civil consequences undoubtedly cover infraction of not merely property but of civil liberties material deprivations and non pecuniary damages In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence The conclusion therefore is inevitable that the imputations made against the petitioner in the counter affidavit do visit him with civil consequences In such a situation normally unless the statute either expressly or impliedly provides to the contrary the doctrine of natural justice would be held to be applicable

14 In Union of India v Tulsi Ram Patel (1985) 3 SCC 398 (AIR 1985 SC 1416) para 100 the Supreme Court has quoted with approval the view expressed by Chinnappa Reddy J in his dissenting judgment in Swadeshi Cotton Mills v Union of India (1981) 2 SCR 533 (AIR 1981 SC 818) to the following effect —

"The principles of natural justice have taken deep root in the judicial conscience of our people nurtured by Binapani (1967) 2 SCR 625 (AIR 1967 SC 1269) Kraipak (1969) 2 SCC 262 (AIR 1970 SC 150) Mohinder Singh Gill (1978) 2 SCR 272 (AIR 1978 SC 851) Maneka Gandhi (1978) 1 SCC 248 (AIR 1978 SC 597) etc etc They are now considered so fundamental as to be implicit in the concept of ordered liberty and therefore implicit in every decision making function call it judicial, quasi judicial or administrative Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner natural justice will have to be observed in that manner and in no other No wider right than that provided by statute can be claimed nor can the right be narrowed Where the statute is silent about the observance of the principles of natural justice such statutory silence is taken to imply compliance with the principles of natural justice The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment Where the conflict is between the public interest and the private interest the presumption must necessarily be weak and may therefore be readily displaced (Emphasis supplied by us)

15 Let us therefore have a look again on some of the provision of the Act to discern the intendment of the Legislature regarding the application of the doctrine of natural justice in the exercise of power of changing an Administrator Section 35 provides for the supersession or suspension of a Committee of Management In sub section (1) it is laid down that the Registrar may supersede a Committee of Management after affording to a reasonable opportunity of being heard and obtaining the opinion of the general body of the Society In sub section (3) of S 35 the Registrar is empowered to appoint either a new committee or an Administrator or Administrators in place of the superseded Committee of Management. This arrangement is to enure for one year Further the Registrar is empowered to change the committee or any member thereof or the Administrator or Administrators appointed under sub section (3) of S 35 at his discretion In sub section (5) it is provided that the committee the Administrator or Administrators appointed under sub sections (3) and (4) shall subject to any directions which the Registrar may from time to time give have the power to exercise all or any of

the function of the committee of management or of any officer of the society and shall be deemed for all purposes under the Act the rules and bye laws of the society to be the committee of management In sub section (6) a duty is cast upon the committee administrator or administrators appointed under sub sections (3) and (4) to arrange for the reconstitution of the Committee of Management to take over the management of the Co-operative Society on the expiry of the period of one year referred to in sub-section (3) It is clear from the scheme of S 35 that the Legislature has contemplated the application of the doctrine of natural justice only when the Registrar is exercising his powers of superseding the existing Committee of Management under sub section (1) This doctrine has not been made applicable when the Registrar is exercising power under sub section (4) Therefore reading sub-sections (1) and (4) of S 35 together it cannot be successfully contended that even in the absence of specific words as found in sub-section (1) the Legislature intended that even at the stage of exercising powers under sub section (4) the Registrar should afford an opportunity of hearing to the committee or any member thereof or the Administrator or administrators appointed under clause (a) or (b) of sub section (3) On the contrary the presence of express words in sub section (1) and observance of complete silence in sub section (5) lead to the irresistible conclusion that by necessary implication the doctrine of natural justice has been made inapplicable in sub section (4)

16 In sub sections (4) (5) and (6) of S 29 the Legislature has adhered to the same policy which is evolved in sub sections (3) (4) (5) and (6) of S 35 If the Legislature excludes the applicability of the doctrine of natural justice when the Registrar exercises power under sub section (4) of Section 35 there is no reason to hold that it intended the application of the said doctrine when the Registrar exercises power under clause (b) of sub section (4) of S 29 On the other hand in the absence of any indication express or implied in clause (b) of sub-section (4) it will be reasonably inferred that the Legislature has stuck to the policy The contents of S 38 clinch the issue against the observance of the rules of natural justice by the Registrar while exercising powers either under sub-section (4) of S 35 or under clause (b) of sub-section (4) of S 29 Sub-section (1) of S 38 provides that the Registrar may in certain situations call upon a co-operative society to remove within a specified period an officer from the office held by him and where necessary also to disqualify him from holding any office in a society for a period not exceeding three years whereupon the society shall after affording opportunity of being heard to the officer concerned pass such order as it may deem fit Sub section (1) of S 38 makes it clear that the Registrar may exercise the power referred to therein without prejudice to any other action that may or can be taken against an officer Sub section (2) provides that on the failure of the society to take action under sub-section (1) the Registrar may after affording opportunity of being heard to the officer and for reasons to be recorded and communicated to the person and the society concerned remove or remove and disqualify for a period not exceeding three years the officer from holding any office under that society On a bare reading this provision does not apply to the appointments made either under clause (b) of sub-section (4) of Section 29 or under sub-section (3) of section 35 Assuming it applies the legislative intendment is made crystal clear that the giving of an opportunity of being heard is not contemplated when the Registrar is taking action either under S 29 or under S 35

17 There is yet another reason as to why the presumption of the applicability of doctrine of natural justice stands rebutted In S 29 as well as in S 35 the Registrar has been armed with the powers of drastic nature of changing the Administrator or the members etc from time to time to meet the exigencies of the situations These situations are of urgent nature Further the presumption is that the Registrar is exercising his powers in the public interest and in furtherance of the scheme and the provisions of the Act Therefore the petitioner cannot be allowed to make any grievance of the fact that the Registrar did not afford him an opportunity of a hearing before exercising the power of removing him from the office even though the order has the effect of visiting him with civil consequence

18. No doubt the heart of the audi alteram partem rule is "justice and fair play in action" Its role is to secure justice and prevent

miscarriage of justice We have seen that an Administrator has no right to continue in office We have also seen that the terms of the statute rule out the application of the said rule of natural justice The question is Should the petitioner be given a post-decisional remedial hearing? While answering this question a conscious effort should be made to avoid an approach which may result in the answer in the negative to the question posed Assuming the foundation of the impugned order is mixed up with certain sigmas the non-observance (sic) of the petitioner Therefore nothing unfair can be inferred by not affording him an opportunity of presenting his case It is not a statutory requirement that the Registrar should record reasons while changing an Administrator The purpose of a post decisional remedial hearing is to restore the status quo as obtaining on the date of an order or action Such a restoration is not countenanced by the provisions of S 29 The power is exercisable from time to time Indeed in the instant case the petitioner has brought to our notice the fact that the Registrar has now replaced the District Magistrate with a Committee of certain persons headed by a Chairman There is nothing in the statute to prevent the Registrar to make yet another change and to continue the process of change The only rider is that his action should be bona fide and actuated by the desire to preserve and advance the interest of the public Therefore no useful purpose will be served by the giving of an opportunity of a hearing to the petitioner now We are therefore of the opinion that the petitioner is not entitled even to a post-decisional hearing

19 To sum up the petitioner was appointed as an officer with a precarious right he had no right to continue as an Administrator the statute excluded the application of the audi alteram partem rule the petitioner was not entitled to a pre decisional hearing he is not entitled to a post decisional remedial hearing and the giving of a hearing now will be an exercise in futility

20 The reasons disclosed by the Deputy Registrar in the counter-affidavit filed in this court show that he honestly and bona fide believed that the continuance of the petitioner as an Administrator was not in the interest of the Bank It cannot therefore be said that he exercised the power arbitrarily The scheme of the Act has already been referred to by us in the earlier part of this judgment The pre amble to the Act and the relevant provisions particularly those contained in Chapter IV are clear and they give out clear guidelines for an action under clause (b) of sub section (4) of S 29 An Administrator is appointed to meet an emergent situation on account of the failure of a Society to elect the members of its Committee of Management An Administrator has to exercise the powers and perform the functions of the Committee of Management and for all practical purposes he has been given the status of the Committee of Management We have already indicated that the Registrar has been vested with wide administrative and supervisory powers He is an officer appointed by the State Government In sum it cannot be said that the Legislature has conferred wide uncontrolled and unfettered powers upon the Registrar to change the Administrator from time to time It goes without saying that even if there is no infirmity in the statute which confers statutory powers on an authority the exercise of power by that authority is always amenable to a challenge on the ground of mala fides or on the ground of it being exercised with an ulterior motive or extraneous consideration We therefore do not find any substance in the submissions made on behalf of the petitioner that the Deputy Registrar either acted arbitrarily in passing the impugned order or the provisions of clause (b) of sub section (4) of S 29 of the Act contravene Art 14 of the Constitution

20A We are now left with the last submission According to the petitioner the impugned order was passed by the Deputy Registrar under the directions of and at the behest of Sri Kashi Nath Misra the then State Minister for Co-operative in the Government of Uttar Pradesh Sri Kashi Nath Misra has filed his affidavit in this Court He has denied the allegations made by the petitioner He has averred that he neither gave any direction to the Deputy Registrar nor made any request to the Deputy Registrar nor used any pressure tactics upon the Deputy Registrar so as to induce him to pass the impugned order The Deputy Registrar in his turn had averred that he passed the order on his own without being influenced at all by Sri Misra These affidavits

sound a death knell of the submission made on this part of the case Reliance is placed on behalf of the petitioner on certain newspaper cuttings filed and annexed to the rejoinder affidavit These cuttings have no evidentiary value and are not even admissible The correspondents who are alleged to have sent the news to the newspapers concerned for publication are neither parties to the petition nor have their affidavits been filed

21 All the submissions made in support of this petition are devoid of merit The petition fails and is dismissed but without any order as to costs

Petition dismissed

1986 ALL L J 485

B N SAPRU AND V N KHARE JJ

M/s Satya Narain & Co and another Petitioners v State of U P and another Respondents

Civil Misc Writ Petn Nos 6336 6338 of 1981 and 10067 of 1980 D/ 4-12 1985

Prize Chits and Money Circulation Schemes (Banning) Act (43 of 1978), S 2(c) — Prize chit — Lucky draw scheme by firm having element of Prize chits and an element of chance — Held, the Scheme squarely falls within the prohibition of Act

The Petitioner firm started a sale promotional advance instalment scheme on certain terms and conditions The scheme was called a benefit scheme and provided for certain benefits as incentives to persons who want to buy the articles on monthly instalments and in order to ensure prompt and regular payment of their monthly instalments The benefit scheme provides inter alia that a person who joins the scheme shall pay the initial instalment and continue to pay the further monthly instalments before the specified date In order to offer incentive to the customers there is a provision for a lucky draw every month A person who is a winner in any lucky draw will not be required to pay any further instalment Those who are not winners of monthly lucky draws will get the articles after the payment of last instalment but if any one wants the article at any time during the continuance of the scheme he can get it by paying the balance instalments in full and still he will be entitled to participate in the monthly lucky draws In case such a person is a winner in any monthly lucky draw an amount equal to subsequent instalments shall be refunded to him and he can purchase any article available with the firm for a price equivalent to the said amount This is described by the petitioners as Instalment Sale Promotion Scheme

Held that the petitioners Scheme squarely comes within the prohibition of the Act It is true that a sale by instalment is not prohibited by the Act but the petitioners scheme is not a scheme providing for only a contract of sale in instalment It has an element of prize chits and an element of chance in it The chance is that if a subscriber draws a lucky number he gets the goods at a reduced price The intention of the Act is to prohibit such a scheme

(Para 11 13)

The factual difference in another Scheme that there were more varieties of goods offered and the schemes which run for 16 months have different rates of subscription and whenever there was a lucky draw the subscribers whose numbers were immediately preceding and succeeding were given a remission of one instalment and if the subscribers had to pay all the 16 instalments and they did not draw the lucky number they would get a cash prize of Rs 50/ by drawing the lucky number would not establish that the scheme was not a prize chits which has been banned under the Act (Para 17)

Cases Referred	Chronological	Paras
1984 All LJ 441		7
AIR 1984 All 28		9

K N Tripathi for Petitioners Standing Counsel for Respondents

B N SAPRU, J — In writ petitions Nos 6336 and 6338 of 1981 the petitioner No 1 is a partnership firm and the petitioner No 2 is a partner thereof

2 The petitioners in Writ Petition No 6336 of 1981 carry on the business of purchase and sale of electrical goods including refrigerators The petitioners claim that in

order to promote their sale of refrigerators and in order to encourage the buyers to make purchases it has started the sale of promotional advance instalment scheme on certain terms and conditions Its apprehension is that since the Prize Chits and Money Circulation Schemes (Banning) Act 1978 (hereinafter to be referred to as the Act) has come into force with effect from 13-2 1978 and the Act has put a ban on prize chits and money circulation schemes the authorities are likely to prosecute the petitioners if they continue with their scheme They claimed that they had certain correspondences with the authorities but the authorities are not agreed with the petitioners that their scheme is not covered by the Act In these circumstances the petitioners have sought relief from this Court under Article 226 of the Constitution of India and prayed that a suitable writ order or direction in the nature of mandamus be issued commanding the respondents not be enforce the provisions of the Act and the Rules framed under the Act against the petitioners

3 The petitioners case is that the firm sells the aforesaid articles on the basis of total cash payment or on credit in full or part or on payment in instalments and in order to promote its sale and to encourage the buyers to make purchases in instalments the firm started a sale promotional advance instalment scheme on certain terms and conditions The aforesaid scheme was called a benefit scheme and provided for certain benefits as incentives to persons who want to buy the said articles on monthly instalments and in order to ensure prompt and regular payment of their monthly instalments The benefit scheme provides inter alia that a person who joins the scheme shall pay the initial instalment and continue to pay the further monthly instalments before the specified date In order to offer incentive to the customers there is a provision for a lucky draw every month A person who is a winner in any lucky draw will not be required to pay any further instalment Those who are not winners of monthly lucky draws will get the articles after the payment of last instalment but if any one wants the article at any time during the continuance of the scheme he can get it by paying the balance instalments in full and still he will be entitled to participate in the monthly lucky draws In case such a person is a winner in any monthly lucky draw an amount equal to subsequent instalments shall be refunded to him and he can purchase any article available with the firm for a price equivalent to the said amount This scheme is described by the petitioners as Instalment Sale Promotion Scheme

4 The petitioners assertion is that the scheme is not a scheme of prize chits It is said that the customers do not receive the article as a consideration for a promise to pay the money on any event or contingency or (Sic) applicable to persons who want to purchase the article on instalments

5 A copy of the scheme has been filed as Annexure 1 to the writ petition The scheme inter alia provides in clause 13 that the membership fee or any subscription to the scheme shall not be refunded to the subscriber It also provides that if any person who has paid two instalments wants to leave the scheme he may do so subject to the condition that the firm will forfeit Rs 200/ and return the balance money to the subscriber provided he buys any goods available with the Company with that amount The scheme also provides that the price of the refrigerator has been kept keeping in view the present price of the refrigerators including the excise and sales tax and if there is any change in it the subscriber will have to pay for it

6 Prize Chit has been defined in section 2(c) of the Act as follows —

Prize Chit includes any transaction or arrangement by whatever name called under which a person collects whether as a promotor foreman agent or in any other capacity monies in one lump sum or in instalments by way of contributions of subscriptions or by sale of units certificates or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings mutual benefit thrift or any other scheme or arrangement by whatever name called and utilises the monies so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes namely

(i) giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot draw or in any other manner prizes or gifts in cash or in kind

whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or arrangement

(ii) refunding to the subscribers or such of them as have not won any prize or gift the whole or part of the subscriptions contributions or other monies collected with or without any bonus premium interest or other advantage by whatever name called on the termination of the scheme or arrangement or on or after the expiry of the period stipulated therein

But does not include a conventional chit

It is submitted that in view of the provisions of S 5 of the Sale of Goods Act there is only a contract of sale between the petitioners and the subscriber It is further stated that the essence of a contract for sale is the transfer of title in goods or a price paid or promised to be paid and the transferee in such a case is liable to the transferor as a debtor for a price to be paid It is contended that the sale is complete and ownership of the goods would pass to the buyer in accordance with the terms of the contract and delivery of goods may be made at a future date to be determined by the terms of the contract

7 The instalment scheme was considered a prize chit in M/s Northern India Refrigerators Company v State of U P 1984 All LJ 441 There a scheme provided for a lucky draw in each month The winners of the Lucky draw were to get the articles immediately thereafter and were not required to pay remaining instalments The remaining members who have not been declared winners would get their articles only after paying the last instalments It was held that even if the scheme is treated as a sale promotion scheme it did not amount to a contract of sale within the meaning of S 5 of the Sale of Goods Act but was a mere agreement to sell It was further held that the intention appears to be that the title in goods passes to the member of the scheme only when the last instalment is paid Since the passing of the title of goods is to take at a future date subject to certain conditions the scheme would come within the definition of an agreement to sell and not a contract of sale

8 The Bench went on to hold that the money so deposited by the members with the promoters of the scheme by way of contributions or subscriptions is the money which the promoters are required to hold in trust for the members till the payment of the last instalment when the agreement to sell matures into a completed sale The Bench also held that if the promoters are trustees of the money so deposited and that money is utilised in drawing lots it is the money of the members which is being utilised That being the position the scheme comes within the definition of the Prize Chit as defined in S 2(e) of the Act

9 A case relied upon by the petitioners is M/s Secured Investment Company Lucknow v Registrar Firms Societies and Chits Lucknow AIR 1984 All 28 The scheme in that case was not considered to be one of prize chit The facts of that case are entirely different and have no relevance for determination of the present case

10 The definition of the Prize Chit has been quoted above A prize chit is defined as a transaction or arrangement under which a person collects money in a lump sum or in instalments by way of contribution of subscriptions or any other scheme or arrangement by whatever name called and utilises the money so collected or any part thereof or the income accruing from investment or other use of such money for all or any of the purposes specified in S 2(e) of the Act which includes giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot draw or in any other manner prizes or gifts in cash or in kind whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or arrangement

11 It will be immediately seen that a drawer of a lucky draw in the petitioners scheme would have been under no liability to make further payment of instalment to get a refrigerator There is thus a gift in kind to the drawer of a Lucky number and consequently there is a prize chit

12 The argument of the learned counsel for the petitioners is that there is a contract of sale of refrigerator is true in the sense that a subscriber who draws a lucky number gets the refrigerator on the payment of a specified number of instalments The contract then

becomes a sale but the petitioners get the contribution and the petitioners scheme will fall within the definition of Prize Chits in S 2(e) of the Act as they collect money in any other manner within the meaning of S 2(e) of the Act

13 It is true that a sale by instalment is not prohibited by the Act but the petitioners scheme is not a scheme providing for only a contract of sale in instalment It has an element of prize chits and an element of chance in it The chance is that if a subscriber draw a lucky number he gets the goods at a reduced price The intention of the Act is to prohibit such a scheme and the petitioners scheme squarely comes within the prohibition of the Act

14 In the result we are satisfied that there are no merits in Writ Petitions Nos 6336 and 6338 of 1981

15 Now taking up the Writ Petition No 10067 of 1980 the questions of law are identical with the questions raised in Writ Petitions Nos 6336 and 6338 of 1981 and this petition can also be conveniently disposed of along with the aforesaid two writ petitions

16 The factual difference is that there are more varieties of goods offered and the schemes which run for 16 months have different rates of subscription The other difference is that whenever there is a lucky draw the subscribers whose numbers are immediately preceding and succeeding are given a remission of one instalment In other words they will get the goods on payment of 15 instalments only instead of 16 Lastly if the subscribers have to pay all the 16 instalments and they did not draw the lucky number they will get a cash prize of Rs 50/ by drawing the lucky number

17 We do not find that any of these features establish that the scheme is not a prize chits which has been banned under the Act This petition also cannot succeed

18. In the result the writ petitions are dismissed with costs

19 We are informed at the Bar that the last scheme of the petitioners in Writ Petition No 6336 of 1981 will come to an end in August, 1986 and the last scheme of the petitioners in Writ Petition No 6338 of 1981 will come to an end in April 1986 If the petitioners are stopped from continuing that scheme the subscribers to the scheme would suffer considerable financial loss In the circumstances we direct that the respondents will not interfere with the petitioners continuing the scheme which ends in August 1986 (in Writ Petition No 6336 of 1981) and in April 1986 (in Writ Petition No 6338 of 1981) They will however be not entitled to start any other similar schemes

Petitions dismissed

1986 ALL L J 488

N D OJHA AND R K SHUKLA JJ

Smt Shakuntala Devi Appellant v Lady Mohan Mathur Respondent

Spl Appeal No 1 of 1981 D/ 9 10-1985 *

(A) Succession Act (39 of 1925), S 63 — Will — Execution — Non registration of will — Effect — Testator dying 9 years after execution of will — Execution of will and its attestation proved by attesting witnesses — No evidence of any suspicious circumstances indicating that testator intended to revoke his will — Inference against genuineness of will could not be drawn on ground of non registration (Paras 8, 9)

(B) Succession Act (39 of 1925), S 276 — Probate — Grant of — Delay in filing application for grant of probate — Death of testator in 1966 — Filing of application for probate 13 years thereafter — Application for mutation just 10 months after death of testator along with copy of will — Names of propounder as well as objector mutated — Copy of will also filed in suit filed two years after death of testator — In absence of limitation for seeking probate of duly executed will and in view of the fact that it being not a case where will saw the light of the day when probate proceeding started, application for probate cannot be thrown out on ground of delay in making it. (Para 10)

(C) Succession Act (39 of 1925), S 63(a)(b)(c) — Original will — 4 sets of will

---

*Against the judgment of Amitabh Banerjee J of this Court D/ 24-12 1980

AD/CD/A398/86/VAN/SNV

executed by testator simultaneously on same date — Each copy duly signed by testator and attesting witnesses — Initials of testator and witnesses present on each correction and modification — Each of four sets became original document — Each set of will was admissible in evidence (Evidence Act (1) of 1872), S 62 Case law discussed.

(Paras 12, 14)

(D) Evidence Act (1 of 1872), S 62 — Admissibility of document — Document admitted in evidence without any objection — Objection as to its admissibility could not be raised at a later stage in appeal. AIR 1972 SC 608 and AIR 1929 PC 110, Rel on.

(Para 15)

(E) Succession Act (39 of 1925), S 63 — Will — Suspicious circumstances — Undue influence — Testator bequeathing entire house property to son and not giving any share in it to daughter — Daughter living in the testator's connected houses looking after testator after death of his wife — Testator executing will in the house of the son in different town — Evidence of attesting witnesses that son was not present in the room where will was executed — From mere fact that son had gone to call witnesses, exercise of undue influence by him could not be inferred when testator did not want that his property should go to outsider and even out of male lineal descendants.

(Para 16)

Cases Referred	Chronological	Paras
AIR 1972 SC 608	(1972) 1 SCC 9	15
AIR 1967 SC 526		11 13
AIR 1965 SC 354		17 18
AIR 1962 SC 567		9
AIR 1959 SC 443		17 19
AIR 1959 Orissa 113		11 12
AIR 1958 Cal 517	1958 Cri LJ 1178	11 13
AIR 1954 SC 280		8
AIR 1930 Lah 371	31 Cri LJ 168	11 12 14
AIR 1929 PC 110		15

R L Sharma for Appellant J M Pant for Respondent

R K SHUKLA, J — This Special Appeal has been filed by Smt Shakuntala Devi against the judgment dt 24-12 1980 of a learned single Judge of this Court in Testamentary case No 7 of 1979 (Suit No 1 of 1980) whereby probate has been granted to the respondent Ladley Mohan Mathur of a will executed by his father Mata Prasad Mathur on 5-6-1957

2 The facts giving rise to this Special Appeal as pleaded by the respondent in brief are that Mata Prasad Mathur father of the appellant and the respondent resident of 'Hardi Bhawan 211 Attarsuia Allahabad who was a retired Head Assistant of the office of the Administrator General at Allahabad and owned properties worth more than Rs 15000/- in the city of Allahabad executed a will Ex P 1 on 5-6-1957 at Kanpur where he was living at that time with his son Ladley Mohan Mathur who was employed in the Kanpur Electricity Supply Administration The will was duly executed and signed by the testator before two attesing witnesses namely Guru Nandan Prasad (P W 1) and Shyam Sunder in a sound disposing mind and of his own free will and accord whereby he bequeathed his three houses Nos 211 (including shops) and 213 along with all other properties to his only son Ladley Mohan Mathur and the wife of Ladley Mohan Mathur namely Phool Kumari except the Government securities of the face value of Rs 1000/- only which were given to his daughter Smt Sakuntala appellant It is further stated that the testator had got the will prepared in quadruplicate and all the four documents were signed by the testator and attested by the attesing witnesses whose affidavits have been filed along with the petition The testator Mata Prasad Mathur gave one copy of the will duly executed and attested by the witnesses to his sons Ladley Mohan Mathur and another to his son in law Sri R N Mathur alias Gopalji (husband of Smt Shakuntala Devi appellant) The remaining copies and the holograph draft will were kept by the testator in an envelope Ex P-4 which was discovered later on by Ladley Mohan Mathur after the death of the testator on 10-6-1966

3. An application for mutation was moved by Ladley Mohan Mathur on 18-4-1967 wherein a true copy of the will was filed One of four copies of the will had been filed by Ladley Mohan Mathur in suit No 720 of 1968 in the court of the Additional Munsif Allahabad and another copy had been filed by him along with the petition for probate in

this Court It indicates that Ladley Mohan Mathur respondent and his wife Smt Phool Kumari Mathur were appointed as executors of this will Notices of the petition for probate filed by Ladley Mohan Mathur were issued to Smt Shakuntala Devi and Smt Phool Kumari Mathur besides the Board of Revenue and the Assistant Controller of the Estate Duty Smt Phool Kumari wife of Ladley Mohan Mathur filed an affidavit in which she stated that she had no objection to the grant of probate in favour of her husband However caveat along with a counter affidavit was filed on behalf of the appellant Smt Shakuntala Devi daughter of Mata Prasad Mathur wherein it was alleged that the will was an unregistered document and it was a fabricated and not a genuine one Rejoinder affidavit/replication was filed by Ladley Mohan Mathur

4 On the basis of the pleadings of the parties the learned single Judge framed the following five issues —

1 Whether the will (Annexure 1 to the petition) dt 5 6-1957 has been duly executed ?

2 Whether the testator executed the will dt 5-6-1957 out of his own free will and whether he was in a sound disposing mind?

3 Whether the will dt 5-6-1957 is a forged and fabricated document If so its effect?

4 Whether the defendant is a person interested and entitled to file the caveat and the objection ?

5 Relief ?

5 After discussing the entire evidence and arguments in detail the learned single Judge has decided all the issues except issue No 4 against Smt Shakuntala Devi appellant hence this appeal

6 Dr Gyan Prakash learned counsel for the appellant has urged that even though the will is stated to have been executed on 5 6-1957 and the testator died on 10-6-1966 the will was not got registered A mutation application was moved by the respondent Ladley Mohan Mathur on 18-4-1967 but the will was not produced and only a copy thereof was produced and even that is not traceable as the record is stated to have been weeded out An application for release was made by the respondent under R 6 framed under U P Act 3 of 1947 on 18-11 1967 regarding a house of the testator But the will was not produced This application was rejected on 20-3 68 on the ground that it had not been moved by the joint owners Ladley Mohan and Smt Shakuntala Devi He also urged that four sets of will were set up one of which was stated to be original and the others as copies or duplicates It is not clear which one is original Therefore no probate can be granted He further contended that the will was unnatural because the testator had deprived the appellant of her right under the Hindu Succession Act to inherit the property of her father along with her brother propounder s presence at the time of execution of the will and calling the witnesses by him make the will suspicious

7 After going through the evidence on record both oral and documentary and the judgment of the learned single Judge who has dealt with all these points in detail we find no merit in any of the points urged by the learned counsel for the appellant

8 It is true that even though the will in dispute was executed on 5 6 1957 by Sri Mata Prasad and he died on 10-6-1966 that is about nine years thereafter the will was not got registered This however is in our opinion of no significance Due execution of the will including its attestation by two witnesses as required by sub secs (a) (b) and (c) of S 63 of the Succession Act has been fully proved by one of the attesting witnesses Guru Nandan Prasad P W 1 who saw Mata Prasad the testator and Shyam Sunder the other attesting witness putting their signatures on the will Ex P 1 He himself signed the same in the presence of Mata Prasad and Shyam Sunder All the corrections and modifications on both pages of the will have been initialled by each one of the aforesaid three persons Guru Nandan Prasad has emphatically denied the suggestion that Mata Prasad was in a very poor state of health in those days Nothing adverse has been elicited in his cross examination which may create any doubt about the veracity of his evidence His evidence finds full corroboration from his affidavit dt 7th Jan 1979 as well as affidavit of Shyam Sunder dt 17th Jan 1979 which are on the record as well as from the evidence of Ladley Mohan Mathur P W 2 and other evidence on the record In these circumstances to draw any inference against the genuineness of the

will Ex P 1 on the ground of its non registration is wholly unwarranted as held in Ishwar Deo Narayan Singh v Kamta Devi AIR 1954 SC 280

9 Relying on a decision of the Supreme Court in Rani Purnima Devi v Kumar Khagendra Narain Dev AIR 1962 SC 567 the learned single Judge has rightly held that it is not necessary that a will should be registered in every case Registration of the will gives support to its authenticity but that is not conclusive It was the privilege of the testator to get the will registered If he did not get it registered during the duration of aforesaid 9 years the plaintiff respondent cannot be blamed for the same It was open to the testator to change his will any time during the period of 9 years but there is no evidence that he did so There is no evidence of any suspicious circumstances indicating that the testator ever intended to revoke his will Reference was made in this connection to a letter dt 11 4-1958 Ex P 6 wherein it is stated that the testator had equal love for both of his children The learned counsel for the appellant has taken this statement contained in the later part of a sentence out of its context and totally ignored the earlier portion of the sentence So long as my daughter and Dear Gopalji are in Allahabad they should be accommodated free of rent if they want to live in peace with you as it would be a disgrace to my name if my daughter lives in a rented house but of course if she wants to live in a separate house there is nothing to prevent her but you should not eject her or let her feel my absence as far as possible He has further written in that letter I do not want my houses to go to an outsider or even out of his male lineal descendants who according to Hindu Shastras and my own view also should always perform Shradh Tarpan and Gaya Pindas for the peace and salvation of the souls of the deceased forefathers In the will and in this letter he has only made provision for Rs 1000/ for the appellant In the end of this letter he has written that I am giving a copy of this letter with a copy of my will to Gopalji entrusting him also to see that my wishes are respected at the proper time In the affidavit of Sri R N Mathur husband of the appellant dt 14th Feb 1980 on the record there is no specific denial that R N Mathur alias Gopalji did not receive this letter and the copy of the will Of course he has stated that the will is fabricated but no evidence has been produced to support this contention From the perusal of the will Ex P 1 it appears that every correction and modification in the will has been signed by the testator and the two attesting witnesses on each page Therefore we are not inclined to hold that this will is a fabricated document In these circumstances non registration of the will creates no suspicion as contended by the learned counsel for the appellant

10 Now we proceed to examine the aforesaid alleged suspicious circumstance of not producing the will in Mutation proceeding as well as in the application for release made under R 6 and the alleged inordinate delay in filing the petition for grant of probate It is true that the death of the testator took place on 10-6-1966 and the petition for grant of probate was filed after about 13 years of the death of Sri Mata Prasad Sri Ladley Mohan P W 2 has however explained this delay in his statement by stating that he had been in service and had been transferred from place to place and he could not therefore apply for probate There is no limitation provided for seeking the probate of a duly executed will To remove the suspicion suggested by the learned counsel for the appellant it will suffice to say that Sri Ladley Mohan moved an application for mutation on 18-4-1967 just after 10 months of the death of Mata Prasad and as is clear from the order on record passed by the Deputy Administrator Nagar Mahapalika Allahabad a true copy of the will was filed which was compared with the original will and that both the attesting witnesses namely Guru Nandan Prasad and Shyam Sunder were examined by Ladley Mohan Mathur in support of his claim on the basis of the will The mutation authorities mutated the names of the appellant and the respondent both against which appeal was filed by the respondent before the District Judge If true copy of the will filed before the mutation authorities is not traceable because the record has been weeded out the respondent cannot be blamed for the same As regards the non filing of the will in the release application filed on 18-11 1967 it may be pointed out that the copy of this application on record indicates that in para 1 thereof it was specifically stated by Ladley Mohan Mathur that he was the owner

of the house in question under a will dt 5 6-1957 duly executed by Sri Mata Prasad Mathur In para 6 of the petition for grant of probate it has been specifically stated that one of the four copies of the will was filed by Ladlay Mohan Mathur in suit No 720 of 1968 (a suit filed in about two years time after the death of Mata Prasad) This statement of fact has not been controverted in the counter affidavit filed by R N Mathur It is therefore apparent that the will was filed in suit No 720 of 1968 in the Court of Additional Munsif Allahabad which is not disputed From these facts it is quite clear that the defendants were aware of the will in dispute and all the claims of the respondent on the basis of the will It is therefore not a case where the will has seen the light of the day for the first time when the probate proceeding started on 5-10-1979 under S 276 of the Succession Act Thus we find no merit in this argument

11 Now we proceed to examine the main argument of the learned counsel for the appellant that four sets of will were set up and the witnesses also speak of original will which is not produced thus it is not clear which one is original therefore probate cannot be granted to the respondent against the will Ex P 1 In support of his contention he relied on Makhan Lal v State AIR 1958 Cal 517 and Hindustan Construction Co v Union of India AIR 1967 SC 526 This point has been discussed in detail by the learned single Judge in his Judgment while deciding the issues Nos 1 2 and 3 together We find no fault in the judgment of the learned single Judge on this point Dr Gyan Prakash learned counsel for the appellant urged vehemently that the will Ex P 1 in dispute was not a testamentary document and was at best a duplicate copy of the original will which has not been produced Therefore probate cannot be granted on the basis of this duplicate will It was also contended that there is no evidence that the original will has been lost and duplicate will Ex P 1 can be treated to be the secondary evidence under Expln 2 of S 62 of the Evidence Act On the other hand Mr J M Pant learned counsel for the respondent urged that the will Ex P 1 was an original document notwithstanding the fact that four sets of will had been executed simultaneously on the same date Since each copy had been duly signed by Mata Prasad and both the attesting witnesses each one of them was original will A mere description in the petition or in the evidence that the will was duplicate one would not render it invalid because Ex P 1 had been duly executed by the testator and duly attested by 2 witnesses which fulfilled all the requirements of a testamentary document and it was admissible in evidence He relied on the cases cited before the learned single Judge namely Ram Chandra v Emperor AIR 1930 Lah 371 and Kruthwasa Padhy v Malati Padhani AIR 1959 Orissa 113

12 After hearing the parties and careful scrutiny of the evidence and will Ex P 1 which is sealed in an envelope and kept separately under the custody of the Registrar with the help of the learned counsel for the parties we are fully satisfied that Ex P 1 which bears signatures of the testator and two attesting witnesses and initials on each correction and modification is an original document and admissible in evidence It has come in the evidence of Guru Nandan Prasad P W 1 one of the attesting witnesses of the will in dispute (Ex P 1) as mentioned earlier that four sets of identical testamentary documents were executed as his final will on 5-6 1957 by Mata Prasad (testator) at the residence of his son Ladley Mohan at Kanpur where the testator was residing at that time It has also come in evidence that both the attesting witnesses S/Sri Guru Nandan Prasad (P W 1) and Shyam Sunder who have filed their affidavits had signed along with testator on each set of the will Guru Nandan Prasad P W 1 has specifically stated that Ex P 1 was signed by the testator as well as by the two attesting witnesses namely he himself and Shyam Sunder It is true that P W 2 Ladley Mohan described it as a copy and Guru Nandan P W 1 has described it as duplicate copy but that would not in our opinion make it a copy in the eye of law It appears that the word copy or the word duplicate has been used in the ordinary parlance only to emphasise that it was exactly the same as the other 3 sets of paper executed on the same date i e on 5-6-1957 The contents were similar and would thus be described as copies but when the documents were signed by the testator as required by S 63(a) and attested by the witnesses as required by S 63(b) and (c) of the Succession Act each set became original document. This view finds support from the

aforesaid decisions in Ram Chandra (AIR 1930 Lah 371) and Kutti Vasan Padhy s case (AIR 1959 Orissa 113) (Supra) on which the learned single Judge has placed reliance

13 The cases of Makhan Lal (AIR 1958 Cal 517) and Hindustan Construction Co (AIR 1967 SC 526) (Supra) relied on by the learned counsel for the appellant are distinguishable on facts. In Makhan Lal s case (Supra) a carbon copy of the search list with certain ink writings on it was not found admissible under S 62 of the Evidence Act. It was held that the whole of the document could not have been made by one uniform process and it could not satisfy the requirements of S 62 of the Evidence Act. In the Hindustan Construction Co case (Supra) the dispute was whether the document filed was a signed copy of the award. The main contention on behalf of the appellant was that the document was signed copy of the award within the meaning of those words under S 14(2) of the Arbitration Act and thus should have been acted upon by the Court On the other hand, it was contended on behalf of the respondent that what had been filed was a certified copy of the award and not signed copy thereof and therefore it would not be acted upon. The Punjab High Court accepted the contention of the respondent and all that it had said in this behalf was that it was not a signed copy of the award and it was certified as correct copy of the award dt. 27th May 1961 The Supreme Court ruled that unfortunately the Punjab High Court had not considered what exactly the words signed copy of the award mean and held in para 7 of the said report as under —

"We accept these observations and are of the opinion that so long as there is the signature of the arbitrator or umpire on the copy of the award filed in Court and it shows that the person signing authenticated the accuracy or correctness of the copy the document would be a signed copy of the award It would in such circumstances be immaterial whether the arbitrator or umpire put down the words certified to be true copy before signing the copy of the award Then turning to the document we find that it begins with the words now I hereby reproduce a true copy of the said award which is as follows and this is signed by Sri Dildar Hussain, the Umpire Then follows the copy of the award At the end we find the words certified as correct copy of the award dt. 27th May 1961 underneath appears the signature of Sri Dildar Hussain, the Umpire Clearly therefore the document filed is a true or accurate and full reproduction of the original award and it bears the signature of the Umpire Sri Dildar Hussain and thus is a signed copy of the award "

14 It was not a case of several identical documents being simultaneously executed. In Ram Chandra s case (AIR 1930 Lah 371) (Supra) the Calcutta High Court was dealing with copies In the instant case document Ex P 1 cannot be said to be a copy but the same is original because it contains the signatures of the testator and attesting witnesses Thus, both the cases relied on by the learned counsel for the appellant are distinguishable on facts. At this place we may point out that when a document is typed and a carbon copy is also taken out simultaneously the first impression is in common parlance known as the original and the carbon copy as the duplicate or copy The will Ex P 1 is a typed carbon copy There must, therefore have been its first impression. In our opinion it is apparent that it is in this sense that the words original and duplicate or copy" have been used with reference to the quadruplicate wills. Therefore on the facts and circumstances of the present case it cannot be said that the testamentary document Ex P 1 is a copy on the other hand it is an original document. Therefore we reject the argument that it was not admissible in evidence under S 62 Evidence Act

15 There is another weighty reason to reject the argument of the learned counsel for the appellant on the question of admissibility of the document Ex. P 1 The reason is that the document was admitted in evidence without any objection It is very well settled that once the document has been admitted in evidence it is not open to the appellant now to object as to its admissibility This proposition of law finds ample support from the decision of the Supreme Court in the case of Purshottama Reddiar v S Perumal (1972) 1 SCC 9 (AIR 1972 SC 608) as well as from the decision of the Privy Council in the case of Bhagat Ram v Khetu Ram AIR 1929 PC 110

16. So far as the execution of the will is

concerned, we have already held that it fulfilled the requirement of S 63 of the Succession Act and it is not necessary to repeat it It will suffice to say that there is uncontroverted cogent evidence that the testator was in perfectly fit state of mind and body on the date of execution of the will. It has also been proved that Mata Prasad had been seen reading and writing without difficulty It is clear from the statement of the P W 1 Guru Nandan Prasad and a perusal of the will Ex P 1 that in the 12th line from the bottom the word or has been corrected as on and initialled by the testator and the two attesting witnesses on page 1 On page 2 there are certain corrections and modifications which are not only initialled by the testator but by the two attesting witnesses as well. Under these circumstances we are fully satisfied that the finding of the learned single Judge that this testamentary document Ex P 1 itself is an original document is perfectly correct and needs no interference

17 Then relying on the observation made by the Supreme Court in para 20 of the report in the case of H Venkatachala Iyengar v B N Thimmajamma AIR 1959 SC 443 and paras 10 to 16 of the report in the case of Ram Chandra v Champa Bai, AIR 1965 SC 354 the will in dispute was attacked on the ground that Ladley Mohan called the attesting witnesses and he was present in the house when the will was executed whereby the appellant was deprived of her natural right to inherit the property of her father In the light of the law laid down in the aforesaid cases and on careful scrutiny of the evidence we are satisfied that there is no force in this argument as well. It has come in the evidence that the testator of the will Sri Mata Prasad had one son and one daughter namely Ladley Mohan and Smt. Sakuntala Devi, which is not disputed It has also come in evidence that the wife of Mata Prasad had died in the year 1940 and he was living in his house alone and was looked after by the appellant who was living with him along with her husband in one of the connected three houses of Mata Prasad It is also not disputed that Ladley Mohan was posted at Kanpur and he was living with his family there Therefore it cannot be said that Ladley Mohan had any undue influence over the testator in executing the will. The facts and circumstances of this case suggest that the position was otherwise because the appellant had got greater opportunity to influence the testator than Ladley Mohan He could not stop his father from coming to his house at Kanpur Guru Nandan Prasad P W 1 has clearly stated that when the will was executed Ladley Mohan was not present in the room There was nobody except the testator and the two attesting witnesses when the will was executed Mata Prasad was an old man He himself could not go to call the witnesses Under these circumstances on the direction of his father calling the attesting witnesses by Ladley Mohan and his presence in the house will not adversely affect the will The testator has given only Rs 1000/ in the shape of bonds to the appellant and all the remaining properties to his son. The reasons for depriving his daughter from the property are very well enshrined in the letter Ex P 6 dt 11 4-1958 wherein he has clearly written I do not want my houses to go to an outsider or even out of his male lineal descendants who according to Hindu Shastras and my own view also should always perform Shradh tarpan and Gaya Pindas for the peace and salvation of the soul of the deceased forefathers If in spite of the services rendered by the appellant to her father he has not given her any share in his other properties that may be unfortunate for the appellant but the Courts cannot help it

18 After careful scrutiny of the evidence on the record we are fully satisfied that there are no suspicious circumstance from which it can be inferred that the will Ex P 1 was executed by the testator not out of his free will and he was not in sound disposing mind No undue influence was ever exercised by his son Ladley Mohan. In our patriarchal society it is not unnatural for a father to give his whole property to his son. It may or may not be justified but the fact remains that generally people in this part of the country do not like to make their daughters co-sharers of their sons Although the appellant has set up a case that the will is a fabricated one she has produced no evidence in support of the same On the other hand Ladley Mohan has produced sufficient evidence to prove his case and remove all doubts. In our opinion Ladley Mohan Mathur himself had not taken any part in the execution of the will which conferred substantial benefit on him Therefore Courts cannot refuse granting probate as held by the Supreme Court in the case of Ram Chandra v Champa Bai (AIR

1965 SC 354) (Supra) as under —

If the propounder succeeds in removing the suspicious circumstances the court would grant probate even if the will might be unnatural and might cut off wholly or in part near relations. It is in the light of these settled principles that we have to consider whether the appellants have succeeded in establishing that the will was duly executed and attested

19 The requirement as laid down by the Supreme Court in the case of H Venkatachala Iyengar (AIR 1959 SC 443) (Supra) has been fully fulfilled by the plaintiff respondent in this case by producing overwhelming documentary and oral evidence to remove all the suspicious circumstances urged by the learned counsel for the appellant. The will Ex P 1 finds full corroboration from its holograph draft which is kept in an envelope Ex P-4 On the material on record we are fully satisfied that the testamentary document Ex P 1 produced before this Court is the last will of the testator and was validly executed by the testator and duly attested by two witnesses. Therefore this point also goes against the appellant. In view of the foregoing discussion we find no merit in this appeal

20. In the result, the appeal fails and is accordingly dismissed. The grant of probate to the plaintiff respondent of the will Ex P 1 executed by Mata Prasad Mathur is upheld In the circumstances of the case there shall however be no order as to costs

Appeal dismissed

1986 ALL. L. J. 495

V K MEHROTRA J

Islamuddin Petitioner v Judge Small Causes Court, Bulandshahr and others, Respondents

Civil Misc Writ Petn No 6723 of 1980 D/ 8 10-1985

(A) Provincial Small Cause Courts Act (9 of 1887), S 25 — Powers of revisional court — Finding recorded on erroneous impression of law by not considering material evidence — Revisional court can remand case for giving fresh finding

In every case the question that is to be examined is whether in recording its decision the revisional court has transgressed the limits set for it. The fact that the trial court had recorded a finding upon an erroneous impression about the true legal position or by not taking into consideration material evidence on record entitles the revisional court to set aside that finding and requires the trial court to go into the matter afresh in accordance with law Case law discussed. (Para 10)

(B) Transfer of Property Act (4 of 1882), S 107 — Rent note, not compulsorily registrable under section — It can be looked into for collateral purposes like determination of nature of possession of a tenant. AIR 1983 All 164, Rel on (Para 12)

Cases Referred	Chronological Paras
1984 All LJ 379 (1984) 1 All Rent Cas 679	
AIR 1984 SC 1447	10
AIR 1983 All 164	12
(1983) 1 All Rent Cas 640	16
1979 All WC 746 1979 Ad CJ 473	9
AIR 1969 SC 1334	8
AIR 1963 SC 698	8 9
AIR 1938 Bom 223	8 9

S A Shah for Petitioner H N Sharma and Standing Counsel for Respondents

ORDER — Chhotey Lal the third respondent, filed a suit in the Court of Judge Small Causes Court Bulandshahar against petitioner Islam Uddin and one Inayat Ullah who is respondent No 4 in this writ petition The suit was numbered as Suit No 32 of 1975 The case which Chhotey Lal set up was that he was the owner of the disputed shop which he had constructed in the year 1969 and had let it out to Islam and Inayat on a rent of Rs. 50/ per month. These tenants made default in payment of rent Their tenancy was, therefore terminated by a notice dated August 13/14 1975 The suit had to be filed when the tenants did not respond to the notice Another relief sought in the suit was for ejectment of the tenants.

2. Inayat Ullah did not contest the suit. Islam, the petitioner filed a written statement. He disputed the claim of Chhotey Lal that he was owner of the property or that he had let

out the premises to Islam It was asserted that the property belonged to a mosque and the relationship of landlord and tenant did not exist between Chhotey Lal and the two defendants. It was also pleaded that the shop was not constructed in the year 1969 and was governed by the provisions of U P Act No 13 of 1972 The notice according to the defence plea, was invalid

3. Chhotey Lal s son, Ram Kishan who claims to be the pairokar of Chhotey Lal, appeared as a witness at the trial He appeared as P W 3 Chhotey Lal did not appear in the witness box because according to Ram Kishan he was a very old man and was unable to do so Two other persons were produced as witnesses by plaintiff Chhotey Lal. Petitioner Islam appeared himself as a witness He also produced some other witnesses including a hand writing expert.

4 The trial Judge dismissed the suit. He held, firstly that it was not proved that Chhotey Lal was the owner of the disputed shop having purchased it through sale-deed (Ex 1) secondly that the rent note (Ex. 3) produced by the plaintiff was not admissible in evidence as it was not a registered document so that the relationship of landlord and tenant was not established between the plaintiff and Islam, the defendant and that the oral evidence was not such which could be believed in that respect. The trial Judge also found that the disputed shop was constructed long before the year 1969 and it was, therefore covered by the protective provisions of U P Act No 13 of 1972 Further the notice (Ex. 7) was invalid because it did not terminate the tenancy of Islam.

5. Chhotey Lal assailed the decision of the trial Judge in a revision under S 25 of the Provincial Small Cause Courts Act That revision was allowed by the II Addl. District Judge Buland Shahr by an order dated April 23 1980 The case has been remanded to the trial Judge for fresh disposal in accordance with law It is this decision which has been assailed by Islam in the present writ petition

6. Sri S A Shah appearing for petitioner Islam, has urged that it was not open to the Addl. District Judge to interfere with the findings of fact recorded by the trial Judge while hearing the matter under S 25 as had been done by him. Further that the decision of the trial Judge on the question whether the relationship of landlord and tenant existed between Chhotey Lal and petitioner Islam, was essentially a finding of fact on the question having been answered in favour of Islam was not open to scrutiny in revision by the Addl. District Judge

7 A certified copy of the judgment of the Addl. District Judge had been filed along with the writ petition A perusal thereof shows that the learned Judge has not himself reappraise the evidence on record nor has he reversed any conclusion allegedly based on appreciation of evidence recorded by the trial Judge What the learned Addl. District Judge has done is to mention some errors of law from which according to him, the decision of the trial Judge suffered and has then directed the matter to be redetermined by the trial Judge in accordance with law

8 In Hari Shankar v Rao Girdhari Lal Chowdhury AIR 1963 SC 698 the Supreme Court while dealing with the scope of S 35 of Delhi and Ajmer Rent Control Act quoted with approval the observation of Beaumont C J in Bell and Company Ltd v Waman Hemraj AIR 1938 Bom 223 in regard to S 25 of the Provincial Small Cause Courts Act In substance the observations are to the effect that the decision if given according to law would not be interfered with except on certain errors of law some of which have been pointed out in those observations In the case before the Supreme Court the learned single Judge of the Punjab High Court had substituted his own decision for the concurrent determination of the two courts below on the question as to when the sub tenancy of one Dr Jain had commenced The same observations were quoted by the Supreme Court in paragraph 7 of their judgment in M.A Naicker v Seth Meghraj Udhavdas AIR 1969 SC 1344 while considering the scope of the powers contemplated by the first proviso to S 75(1) of the Provincial Insolvency Act

9 In Laxmi Kishore v Hari Prasad Shukla 1979 All WC 746 a Division Bench of this court speaking through Satish Chandra C J after referring to the Supreme Court decision in Hari Shankar s case (AIR 1963 SC 698) extracted a part of the observations made by Beaumont Chief Justice in Bell and Companies

case (AIR 1938 Bom 223) Eventually the Division Bench observed in paragraph 18 that the court deciding a revision under Sec 25 Provincial Small Cause Courts Act had to satisfy itself that the trial court s decree or order was according to law and that a wrong decision on facts was also a decision according to law Later in paragraph 20 it observed that where the revisional court finds that a particular finding of fact is vitiated by an error of law it has power to pass such order as the justice of the case requires but it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact for itself Further if it cannot dispose of the case adequately without a finding on a particular issue of fact it should send the case back after laying down proper guidelines

10 The principle laid down in these cases is by now fairly settled and in every case the question that is to be examined is whether in recording its decision the revisional court has transgressed the limits set for it The fact that the trial court had recorded a finding upon an erroneous impression about the true legal position or by not taking into consideration material evidence on record entitles the revisional court to set aside that finding and require the trial court to go into the matter afresh in accordance with law This principle was accepted by this court in Janardan Pandey v Ist Addl District Judge Nainital, (1983) 1 All Rent Cas 640 and by the Supreme Court in Jagdish Prasad v Smt Angoori Devi, (1984) 1 All Rent Cas 679 (1984 All LJ 379)

11 The Addl District Judge found that while discussing the question of the relationship of landlord and tenant between Chhotey Lal and petitioner the trial Judge had given no reason whatsoever for discarding oral evidence produced by the plaintiff It appears from the decision of the trial Judge of which a certified copy has been filed along with the writ petition, that after taking the view that the rent note could not be taken into consideration as it was an unregistered document the trial Judge proceeded to hold that the oral evidence in the case was not enough to establish the case of Chhotey Lal that Islam was his tenant Why was the oral evidence not sufficient for that conclusion has not been indicated in the judgment by the trial Judge What he says is that plaintiff Chhotey Lal did not appear in the witness box Apparently an adverse inference was drawn by the trial Judge Sri Sharma is right in his submission that the son of Chhotey Lal namely Ram Kishan who appeared as a witness in the case clearly stated about the reason why Chhotey Lal was not produced as a witness in the case This reason was not considered by the trial Judge at all. In fact, apart from a reference to Ram Kishan being P W 3 in the case there is hardly any discussion of this evidence to be found in the judgment of the trial Judge It was open to the trial Judge to have refused to accept the testimony of Ram Kishan but it was necessary for his decision to be in accordance with law that he should have considered his evidence That the evidence of Ram Kishan was a material piece of evidence on the record of the case cannot be doubted Its non-consideration clearly amounts to the plaintiff not receiving a fair trial at the hands of the trial Judge

12 The trial Judge held that on account of non registration the rent note (Ex 3) could not be looked into at all. This too was a mistaken impression about the legal position The rent note which is not compulsorily registrable under S 107 of the T P Act can still be looked into for collateral purposes like determination of the nature of possession of a person said to be a tenant This legal position is not in doubt and if authority is needed it can easily be found in a recent Division Bench decision of this Court in Zarif Ahmad v Satish Kumar AIR 1983 All 164 In it are referred to a large number of earlier decisions of this Court and of the Supreme Court

13 It was strenuously contended by Sri Shah that after the trial Judge had recorded a clear finding that plaintiff Chhotey Lal was not the owner of the property legal error if any in the finding about the relationship of landlord and tenant between him and petitioner Islam was of no consequence The direction for remand of the case was therefore, wholly unjustified This submission overlooks that in recording a conclusion about the ownership of the property which the trial court could do only incidentally the statement of P W 3 Ram Kishan has been completely overlooked. It is not necessary for me to refer to those portions of his statement which relate

to the question of ownership as I am inclined to uphold the order of remand and any observation made by me may result in prejudice to either party The evidence may not have found favour with the trial Judge who has, in the course of his conclusion on the question of the ownership drawn heavily on the circumstance that the name of the vendee in this sale deed was shown as Rajendra Prakash and that it was not established that the sale deed related to the shop in dispute If the trial Judge had only cared to go through the statement of P W 3 Ram Kishan and that of P W 2 Anand Swaroop Photographer he could have inter alia, found that Rajendra Prakash was the son of Ram Kishan and that there was material connecting the sale deed with the shop in dispute He may not have accepted the evidence but there was no justification for him not to have considered the oral evidence which was clearly relevant

14 The decision recorded by the trial Judge in the aforesaid circumstances was rightly held by the Addl. District Judge to be not in accordance with law for purposes of S 25 of Provincial Small Cause Courts Act The Addl District Judge committed no manifest error of law in setting aside the decree and directing reconsideration of the case by the trial Judge in accordance with law

15 In conclusion, the petition fails and is dismissed, but the parties are directed to bear their own costs of this Court

Petition dismissed

1986 ALL L J 498

A S SRIVASTAVA AND R P SHUKLA JJ

Amar Mani Tripathi, Petitioner v State of Uttar Pradesh and others Respondents

Habeas Corpus Petn No 17282 of 1984 D/ 5-9 1985

(A) National Security Act (65 of 1980), S 3 — Law and order — Meaning of — Specified individuals targets of attack — In none of the grounds against detenus public at large involved or made target of attack — Cause of attack personal animosity — Held, grounds do not relate to problem of public order but are problems of law and order

(Para 18)

(B) National Security Act (65 of 1980), S 3 — Ground of detention based on FIR under Ss. 384 and 506, IPC — Ground if relates to law and order or public order

Where the ground of detention was based on a first information report made by the complainant under Ss 384 and 506 IPC according to which the detenu had called upon the complainant at his house with intention to have unlawful possession and ownership over the petrol pump owned by the complainant and obtained his signature on 6-7 stamp papers that were kept in readiness at the point of gun and had told the complainant that he would take possession of the said petrol pump the next morning and the threat was extended in a private house and not in public place and the target of threat was also a single individual i e the complainant and no other trader was involved therein it was held that this act had no potentiality to affect the tempo of life of other traders and was therefore a problem of law and order and not the public order (Para 20)

(C) National Security Act (65 of 1980), S 3 — Public order — Meaning of — Ground of detention relating to an act by which detenu along with his associates committed murder of a person in a shop in important business centre of the district — Assault made on single individual on account of enmity and had no reach on local community or public at large — Ground has no nexus with public order — Habeas Corpus Petition No 11151 of 1984, D/ 1-8-1985 (All) (FB), Rel on (Para 21)

(D) National Security Act (65 of 1980), S 3 — Law and order — Meaning of — Detenu and his associates stopping car of complainant and firing at him and his associates — Spectator not a traget of attack getting injured and dying — Ground relates to law and order and not public order

Where the detenu and his associates stopped the car of the complainant and fired at him and his associates seated in the car and as a matter of chance a spectator a boy of the bazar got injured and died who was not a target of attack nor any other member of the common public was made a target and it was

---

JC/BD/F570/85/SMA

not alleged in the ground that the incident caused so much terror in the locality that those living there were prevented from following their usual avocations of life and the activity attributed to the detenu in this ground was reprehensible but it had no potentiality to disturb the even tempo of the community The ground, therefore, relates to law and order and not public order (Para 24)

(E) National Security Act (65 of 1980), S 3 — Public order — Meaning of — Ground of detention relating to booth capturing by detenu and his associates during bye-election — Ground whether relates to public order

Where the ground of detention relates to an incident of booth capturing by detenu and his 30-35 other associates, during a bye-election in the district the detenu and his associates resorted to firing to create terror As a result of firing a person died on the spot and three others were injured It was held that on the day of election, in a public place like the polling booth the act of indiscriminate firing by the detenu and his associates resulted in dislocation of the election Election is the very foundation of Democratic form of Government to which our country is wedded. An act of violence and terror that shakes the faith of the people in the very system of election does have nexus to public order The ground related to problem of public order (Para 25)

(F) Constitution of India, Art 22(5) — Order of detention — Validity — Report of senior Superintendent of Police containing basic facts forming grounds of detention not supplied to detenu — Order of detention vitiated (Para 31)

Cases Referred Chronological	Paras
1985 Cri LJ 999 (All)	15
(1985) Habeas Corpus Petn No 1115 of 1984 D/ 1 8 1985 (All) (FB)	21
AIR 1983 SC 320 1983 Cri LJ 629	15
AIR 1981 SC 1126 1981 Cri LJ 750	15
AIR 1980 SC 1983	29
AIR 1975 SC 550 1975 Cri LJ 446	28
AIR 1972 SC 2686	23

O P Misra for Petitioner Dy Govt Advocate for Respondents.

ORDER — Amar Mani Tripathi, Petitioner (hereinafter referred to as the detenu") has filed this Habeas Corpus Petition under Art. 226 of the Constitution, challenging the validity of the detention order dated 1 11 1984 passed by the District Magistrate Gorakhpur (hereinafter referred to as the detaining authority) exercising his powers under sub-sec (3) of Sec 3 of the National Security Act 1980 Act No 65 of 1980 (hereinafter referred to as the Act) directing his detention under sub-sec (2) of S 3 of the Act in District Jail Gorakhpur The said detention order is Annexure 1 to the petition On 2 11 1984 the petitioner detenu was served with the detention order and the grounds and was sent to District Jail Gorakhpur when he surrendered before the District Magistrate on that day

2 The detention order and its grounds were received by the State Government on 19-11 1984 and were approved on 23-11 1984 Intimation of approval was sent to the District Magistrate Gorakhpur on 26-11 1984 The case of the detenu was referred to Advisory Board on 29-11 1984 The representation of the detenu dated 17 12 1984 was received by the State Government on 19-12 1984 from the District Magistrate Bareilly The representation was placed before the Advisory Board on 22 12 1984 The representation of the detenu was examined in the Secretariat on various levels as averred in the supplementary counter affidavit filed by Sri Gopal Trivedi, an Upper Division Assistant in the Confidential Section 5 U P Civil Secretariat, Lucknow and was rejected on 28-12 84 Intimation of rejection of the representation was sent to the detenu on 31 12 1984 through the Superintendent, Central Jail, Bareilly

3 The grounds of detention appear in Annexure 2" to the petition which are stated as follows —

(1) That on 7 5-1983 at 6.30 p m. the detenu along with his leader Sri Hari Shanker Tewari, and the other members of his gang, namely Parmatma Tewari, Anoop Lal, Suresh Pandey Shaukat Ali, Kripa Shankar Pandey Krishna Mohan Pandey and Abrar Iraqi and others armed with rifles and stopped the car of Virendra Pratap Shahi, M.L.A. in which Gyan Prakash Shahai, Hasan Beg and others were seated in Laxmipur Bazar Police Station Purenderpur on the main road, and started indiscriminate firing with the result that Hasan

Beg and a boy of the Bazar namely Hira Lal died on the spot A terror wave was unleashed due to this incident The people were fear stricken and terrorised. The public order was disturbed This ground relates to the first information report made by Gyan Prakash Shahi at Police Station Purenderpur on the basis of which a case was registered under Ss 147 148 149 307 and 302 I P C at Crime No 68 of 1983 The said offence is being investigated by the C I D

(2) That on 3 8 1983 at 8 30 a m in Khalilabad, an important business centre of district Basti the detenu along with Hari Shanker Tewari Krishna Kumar Pandey alias Tuntun Arvind Singh and Rakesh Singh, the members of his gang armed with revolver and other fire-arms came on motor cycle and, due to enmity fired on Hira Raj Singh who was taking tea at a shop Hira Raj Singh died in the Medical College Gorakhpur on 6 8 1983 Khalilabad and nearby areas were terror stricken of his gang due to this incident Thus the public order was distrubed The ground is based on the case registered at Crime No 222 of 1983 under Ss 147 148 143 307 and 302 I P C at Police Station Khalilabad on the report of Zeenat Singh The case is being investigated by C B C I D

(3) That on 23-12 1983 at about 1 00 p m the detenu along with Ravindra Rao Hari Shanker Tewari and 30-35 others of his gang armed with rifle and gun with the intention of capturing Mughalpura Polling Booth and forcibly casting votes in village Mughalpura Police Station Patheharwa, district Deoria during the bye-election started threatening the people and the detenu and Hari Shanker Tewari, in order to create terror fired which resulted in the death of Sukhal Rao and injuries to Belbhar Ram Kali and Mohammad Din because of the indiscriminate firing by the detenu and his companions on the day of election at the police booth, the election work was dislocated and the people were frightened They started running helter and skelter and the terror wave was unleashed. Thus, the public order was disturbed This ground related to the first information report lodged by Basdeo Rao at Police Station Patherwa, district Deoria, on the basis of which a case was registered at Crime No 94 of 1983 under Ss 147 148 149 and 307 I P C

(4) On 15-8-1984 at 9 30 p m. in Mohalla Krishna Maraiya Humaunpur (South) of the city of Gorakhpur the detenu called for Sri Vijay Kumar Agarwal resident of Mohalla Bindyasni Police Station Kotwali, Gorakhpur at his residence and with the intention to have unlawful possession and ownership over the petrol pump owned by Vijay Kumar situate at Golf ground in Mohalla Mohiuddinpur along with his three other associates threatened Vijay Kumar at gun point and frightened him and obtained his signature on 6 7 stamp papers which were already written and prepared and the detenu also told Vijay Kumar that his petrol pump then belonged to the detenu and that the detenu would take possession over the same by 6 00 a m in the morning The business community was terror stricken and frightened due to this incident The businessmen closed their shops and the whole of Gorakhpur was terrorised Thus the public order was disturbed The ground is based on the first information report made by Vijay Kumar at Police Station Kotwali Gorakhpur under Ss 384 and 506 I P C registered at Crime No 272 of 1984

4 On 6 8 1984 Kaushal Tewari son of Hari Shankar Tewari abducted and committed the murder of one Sardar Ajit Singh at the Chhawam of Hari Shankar Tewari situate in village Sunauli, Police Station Nautanwa. A case under S 364 I P C was registered at Police Station Nautanwa at Crime No 74 of 1984 and was altered during investigation to one under Ss 302/201 I P C Great angush and terror prevailed in Nautanwa due to this incident and several demonstrations strikes and incidents of road held up and train held up took place The district administration was faced with a serious problem and to cope with the situation P A C was called To terrorise the witnesses of the said murder and to suppress the opposition there and to create fear in the people there the detenu indulged in acts which created terror and public order was breached The incidents are as follows —

(5) That in the night between 3rd and 4th October 1984 at about 3 00 a m the detenu along with his gang leader Hari Shankar Tewari Ganesh Shankar Pandey Kripa Shankar Pandey Krishna Mohan Pandey Guchchhan Pandey Daya Chandra Pandey Ram Chandra Singh, Indra Kamal Pandey Anooplal, Durga Shankar Pandey Sant Kumar Dhobi and 30 others in six vehicles armed with fire-arms raided the house of Guru Prasad

Singh with intention to murder him and his family members Guru Prasad and his family members raised alarm

5 They then went away threatening him to stop the opposition otherwise they would get whole of Nautanwa burnt. S 144 Cr P C was in force in Nautanwa during that period and demonstration of fire-arms or other arms or to move with arms was prohibited But the detenu and his gangman did not care for that and created terror and disturbed the public order Guru Prasad lodged a report at Police Station Nautanwa under Ss 147/332 504 506 I P C and the case was registered at Crime No 199 of 1984

(6) That on 4-10-1984 at 2 00 p m the detenu along with his gang leader Hari Shankar Tewari and Kripa Shankar Pandey Krishna Mohan Hamid Pradhan Dayaram Dulare and Baboolal his gangman armed with rifles and guns entered the house of Mahant Singh resident of Sakrauli Police Station Nautanwa with intention to commit his murder Mahant Singh escaped into the house of Kalpanath Singh The detenu and his associates took away his Rs 2 600/ They threatened that the family members of Mahant Singh would be killed if he appeared as a witness in Ajit Singh s murder case

6 A case was registered at Crime No 111 of 1984 under Ss 143/452/380 I P C at Police Station Nautanwa on the report of Mahant Singh

(7) That on 5 10-1984 at about 5 45 p m Anirudh Kumar Jaiswal was sitting in his rice mill when the detenu along with his gang leader Hari Shankar Tewari and Ganesh Shankar Pandey Durga Shankar Pandey Guchchhan Pandey Abrar Iraquee and other associates armed with rifle gun and sten gun etc reached there in a jeep with intention to commit his murder and fired indiscriminately on him He somehow saved himself by hiding in the mill This created sensation in Natuanwa and nearby areas All were terrorised by the detenu and his gang Thus the public order was breached

7 A case was registered at Police Station Nautanwa at Crime No 113 of 1984 under Ss 147 148 149 and 307 I P C on the report of Anirudh Kumar Jaiswal.

(8) That on 5-10-1984 at about 5 45 p m. when Guru Prasad was going from the side of Thuthibari Teraha, the detenu along with other associates of his gang armed with rifles and guns in 8-10 jeeps while coming from the side of Suraulı saw him and with intention to commit his murder fired at him He somehow fled away and saved himself

8 On the report of Guru Prasad, a case was registered at Crime No 113-A of 1984 under sections 147 148 149 and 307 I P C at Police Station Nautanwa.

(9) That on 5-10-1984 at about 5 45 p m the detenu along with the members of his gang armed with rifles, guns and sten guns driven in 8 10 jeeps with intention to commit his murder fired at Kuldeep Singh who was going to police station to make a report about the terror created by the detenu and his associates in regard to the murder of Ajit Singh and went away He somehow saved his life by hiding Terror wave was unleashed by this incident and the people were frightened A case was registered at Crime No 113-B of 1984 under sections 147 148 149 and 307 I P C at Police Station Nautanwa

(10) That in the night between 9th and 10th October 1984 at about 12 45 a.m the detenu along with his gangman Kripa Shankar Pandey Krishna Mohan Pandey Dayanand Pandey Abrar Iraquee 40-50 persons driven in a jeep armed with rifles and guns arrived at the gate of the house of Kunwar Akhilesh Singh and called his name and threatened to kill him and on the exhortation of the detenu Kripa Shankar fired two rounds on Akhilesh Singh who saved himself by hiding Terror prevailed in whole of Nautanwa by this incident

9 10 A case was registered at Crime No 146 of 1984 at Police Station, Nautanwa on the report of Akhilesh Singh under Ss. 147 148 149 and 307 I P C

11 12 On the aforesaid grounds the District Magistrate Gorakhpur was subjectively satisfied that the detenu was likely to indulge in activities prejudicial to the maintenance of public order and to prevent him from indulging in activities prejudicial to the maintenance of public order found it necessary to preventively detain him and passed the aforesaid detention order

13. While challenging the detention order

the learned counsel for the detenu has contended —

(1) that his representation was decided after inordinate delay without there being any explanation for the same

(2) that the incidents, on which the detention order is grounded all relate to law and order and not to public order and

(3) that material and relevant documents which were relied upon by the detaining authority to arrive at the subjective satisfaction have not been supplied to the detenu and, therefore the detenu has been deprived of his right of making effective representation against the detention order

14 In order to decide the first point we have to consider the following admitted facts

15 The representation of the detenu is dated 17 12 1984 The supplementary counter affidavit filed by Sri Gopal Trivedi Upper Division Assistant in Confidential Section 5 U P Civil Secretariat, Lucknow on behalf of the State Government admits in paragraph 2 of the said affidavit that the representation of the detenu was received by the State Government on 19 12 1984 and the same was rejected by the State Government on 28 12 1984 According to the affidavit of Sri Trivedi, comments of the District Magistrate Gorakhpur were asked on the same day i.e 19 12 1984 and were received by the Government on 22 12 1984 along with the letter of the District Magistrate Gorakhpur dated 21 12 1984 In our opinion the comments of the District Magistrat, Gorakhpur (detaining authority) were necessary while considering the representation In the aforesaid supplementary affidavit, it is stated that the representation of the petitioner was examined at various levels in the Secretariat and was rejected by the State Government on 28 12 1984 " Between 22nd and 28th December 1984 two days i e 23rd December (being Sunday) and 25th December (being X mas) were holidays Thus the Government took three days at the Secretariat level to decide upon the representation of the detenu. It would have been better if the explanation offered on behalf of the State Government through the affidavit of Sri Trivedi was more specific as to who considered the representation and at what level but in the circumstances of the present case we are of the opinion that the time taken by the Government in deciding the representation cannot be said to be unreasonable nor it can be said that there was inordinate delay in deciding the representation of the detenu Taking a practical view of the situation some time is bound to lapse between the receipt of the representation, consideration and decision thereon No hard and fast rule as to the measure of time can be laid for the appropriate authority for such consideration but the time taken should not be the result of apathy indifference inaction or lethargy at any stage In the present case the comments of the detaining authority were necessary and we have already held that the time taken at the Secretariat level was not unreasonable On behalf of the detenu reliance has been placed on a decision of the Supreme Court in Harish Pahwa v State of U P AIR 1981 SC 1126 In that case the representation of the detenu dated 3rd June 1980 was received by the State Government on 4th June 1980 but for two days no action was taken in connection with it on the 6th of June 1980 comments were called for from the custom authorities with regard to the allegations made in the representation and such comments were received by the State Government on 13th June 1980 On the 17th of June 1980 the State Government referred the representation to its Law Department for its opinion which was furnished on the 19th of June 1980 The rejection of the representation was ordered on the 24th of June 1980 The case of the State was that the representation was with the Customs Authorities who were formulating their comments from 7th June 1980 to the 12th June 1980 and the representation was under the consideration of the Government for four days from 13th June 1980 to 16th June 1980 of its Law Department from 17th June 1980 to 19th June 1980 and then again under its own consideration for six days from 19th June 1980 to 24th June 1980 It was in such circumstances that their Lordships observed that calling comments from other departments seeking the opinion of the Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in matter of such vital import

Reliance has also been placed on a decision of this Court in Rajendra Kumar Sharma v Superintendent, District Jail Agra 1985 Cri LJ 999 where the representation of the detenu was placed before the Home Secretary on 26-8 1984 which could not be placed before the Chief Minister on 30-2 1984 There was no explanation as to why that representation which took thirteen days in travelling from section concerned to the Home Secretary remained lying for further four days at his table The journey of that representation in the Secretariat of the State from 13-8 1984 to 30-8-1984 had not been swift and there had been needless wastage of time at some stages of that journey and therefore it was held that there was undue delay in disposal of the petitioner s representation which could not be justified Reliance has also been placed on a decision of the Supreme Court in Raj Kishore Prasad v State of Bihar AIR 1983 SC 320 wherein there was twenty eight days delay in considering the representation of the detenu and therefore their Lordships held it to be mordinate delay in the circumstances of that case The facts and the circumstances of the cases cited above differ from the facts and circumstances of the instant case In the present case there has been no delay at the end of the District Magistrate and at the Secretariat level. Excluding the two holidays only three days time was taken for the decision upon the representation of the detenu and taking a practical view we have said that the time taken at the Secretariat level is not unreasonable Thus the first contention of the detenu is repelled as aforesaid

16 Before we proceed to examine the grounds of detention with a view to find out whether they relate to problem of law and order or public order it is necessary to point out that in paragraph 15 of the writ petition the petitioner has specifically asserted that all the cases are as a consequence of enmity with the aforesaid Virendra Pratap Shahi This assertion has not been denied by the District Magistrate Sri R P Sinha in his counter affidavit. The representation of the detenu is Annexure I" to the supplementary affidavit of Fateh Bahadur In para 9(Da) of this Annexure I the detenu asserted that Virendra Pratap Shahi had tried to commit his murder and the report in that respect was lodged at Police Station Hazratganj at Lucknow He has also asserted that Virendra Pratap Shahi was arrested by Hazratganj Police in connection with that case The enmity between Virendra Pratap Shahi and the detenu is not denied Ground No 1 relates to the first information report made by Gyan Prakash Shahi and registered at Crime No 68 of 1983 at Police Station Purenderpur district Gorakhpur According to this report the detenu and his companions resorted to indiscriminate firing at Virendra Pratap Shahi and his associates namely Gyan Prakash Shahi and Hasan Beg who were travelling in the car of Virendra Pratap Shahi

17 Annexure 4 to the supplementary affidavit filed by Fateh Bahadur is a first information report lodged by the detenu on 9-10 1984 at 6 30 p m at Police Station Nautanwa, Gorakhpur under Ss 147 148 149 and 307 I P C against Akhlesh Singh, Kuldeep Singh Gur Prasad Singh Dilip Jaiswal Munna Singh Dhaneshwar Burnwal Rameshwar Burnwal Banarsi Lal and some others Annexure 3 to the same supplementary affidavit is another report made by Sri Durga Shanker Pandey at Police Station Nautanwa on 20-8 1984 wherein Virendra Pratap Shahi Sardar Kuldeep Singh Sardar Sre Singh, Sheo Bahadur Singh Bachche Singh, Rana alias Tara and Anirudh Jaiswal have been made accused This Durga Shanker Pandey is an associate of detenu, as is mentioned in Grounds Nos 5 and 7 of the detention order Annexure 5 to the supplementary affidavit contains the grounds of detention against Akhlesh Singh whose detention order is based on the first information report lodged by Durga Shanker Pandey and the detenu In these grounds. Kuldeep Singh Anirudh Jaiswal and Gur Prasad Singh have been mentioned as associates of Akhlesh Singh Grounds Nos. 1 5 7 8 9 and 10 relate to these persons Virendra Pratap Shahi and his associates, namely Akhlesh Singh Kuldeep Singh, Gur Prasad Singh and Anirudh Jaiswal are thus inimically disposed towards the detenu

18. In Grounds Nos. 5 7 8 9 and 10 the specified individuals, namely Gur Prasad Singh Anirudh Jaiswal, Kuldeep Singh and Akhlesh Singh are the targets of attack In none of these grounds, the public at large is involved or is made the target of attack The

cause of attack is personal animosity In our opinion these grounds do not relate to problem of public order They are problems of law and order

19 Ground No 6 relates to first information report made by Mahant Singh at Crime No 111 of 1984 under Ss 143 452 and 380 I P C at Police Station Nautanwa wherein it is alleged that the detenu along with his associates all with rifles and guns entered the house of Mahant Singh at 2 00 p m on 4-10-1984 with intention to commit his murder Mahant Singh escaped into the house of Kalpa Nath Singh The detenu and his associates took away Rs 2 600 belonging to Mahant Singh and threatened that the family members of Mahant Singh would be killed if he appeared as a witness in Ajit Singh s murder case Mahant Singh was threatened at his residence of course with show of force The threat was not extended to him in public place but at his own residence In our opinion this act has no potentiality to effect the even tempo of the life of the community and is therefore again a problem of law and order and has no relation to public order Regarding this ground final report No 34 had been submitted on 21 10 84 as averred in paragraph 3 of the supplementary rejoinder affidavit of Fateh Bahadur Photostat copy of the questionnaire in this respect is annexed to the said supplementary rejoinder affidavit as Annexure 1 The said final report has been accepted by the C J M Gorakhpur much before the detention order was passed Thus it is clear that, after investigation the police found that the allegations made by Mahant Singh in the first information report were not genuine How could the District Magistrate form the requisite satisfaction on the basis of such a report His satisfaction, therefore was based on a ground which is non existant

20 The Ground No 4 is based on a first information report made by Vijai Kumar at Police Station Kotwali Gorakhpur under sections 384 and 506 I P C registered at Crime No 272 of 1984 According to this report, the detenu called Vijai Kumar Agrawal at his house with intention to have unlawful possession and ownership over the petrol pump owned by Vijai Kumar obtained his signature on 6-7 stamp papers that were kept in readiness, at the point of gun The detenu also told Vijai Kumar that he would take possession of the said petrol pump the next morning at 6-00 a m This threat was extended in a private house and not in public place The target of threat is also the single individual i e Vijai Kumar Agrawal and no other trader is involved the ein This act, therefore has no potentiality to affect the tempo of life of other traders and is therefore a problem of law and order and not the public order

21 The second ground related to an act by which the detenu along with his associates committed the murder of one Hira Raj Singh who was taking tea at a shop in Khalilabad an important business centre of district Basti The cause of murder is enmity as described in the ground itself In Habeas Corpus Petn No 11151 of 1984 decided by a Full Bench of this Court on 1 8 1985 it has been observed

Murderous assault on an individual in a street on account of personal animosity may affect an individual while if a similar murderous assault is made on caste basis or communal basis the incident would in all likelihood create caste hatred and communal riot which would endanger public order and tranquility Here assault has been made on a single individual on account of enmity It has no reach on the local community or public at large The ground therefore has no nexus with public order

22 As regards ground No 1 we have pointed out earlier that Virendra Pratap Shahi attempted to kill the detenu at Lucknow The activity alleged in ground No 1 is aimed at Virendra Pratap Shahi and his associates It is very clear that the detenu and his associates stopped the car of Virendra Pratap Shahi and fired at him and his associates seated in the car

23 It is just a matter of chance that a spectator a boy of the bazar got injured and died He was not a target of attack nor any other member of the common public was made a target and is not alleged in the ground that the incident caused so much terror in the locality that those living there were prevented from following their usual avocations of life In Dipak Bose v State of West Bengal AIR 1972 SC 2686 the Hon'ble Supreme Court has observed

Every assault in a public place like a public

road and terminating in the death of victim is likely to cause horror and even panic and terror in those who are spectators But that does not mean that all such incidents do necessarily cause disturbance or dislocation in social life of the localities in which they are committed

24 The activity attributed to the detenu in this ground is reprehensible but it has no potentiality to disturb the even tempo of the community The ground therefore relates to law and order and not public order

25 The ground No 3 relates to an incident of booth capturing by detenu and his 30-35 other associates On 23-12 1983 at 1 00 p m during a bye election in district Deoria The detenu and his associate Hari Shankar Tewari resorted to firing to create terror As a result of firing Sukna Rao died on the spot and three others were injured On the day of election in a public place like the polling booth the act of indiscriminate firing by the detenu and his associate resulted in dislocation of the election Election is the very foundation of Democratic form of Government to which our country is wedded An act of violence and terror that shakes the faith of the people in the very system of election does have nexus to public order We are of the opinion that this ground relates to problem of public order

26. As regards this ground it has also been contended on behalf of the detenu that the ground is based on no material In para 10 of the supplementary affidavit of Fateh Bahadur it is averred that, with respect to ground No 3 final report had been submitted before the detention order was passed by the District Magistrate and that the final report was not placed before the detaining authority and it was, therefore not considered by the detaining authority at the time of passing the detention order In the supplementary counter affidavit Sri R P Sinha, District Magistrate Gorakhpur has denied that any final report was submitted and has averred that the C I D investigation was going on when the detention order was passed. However it has not been averred nor any document has seen filed on behalf of the detenu that the final report was filed and accepted by court. Even if final report had been submitted before the departmental authority further investigation in that respect could be carried on and therefore the contention on behalf of the detenu has no force and the result is that this ground is the public disorder

27 The third contention on behalf of the detenu is that relevant and material documents which were relied upon by the detaining authority to arrive at the subjective satisfaction have not been supplied to the detenu and therefore the detenu has been deprived of his right under Art 22(5) of the Constitution of making effective representation against the detention order In his representation (Annexure 1 to the supplementary affidavit of Fateh Bahadur vide paras Nos 19 and 20) the detenu had specifically demanded a number of documents vide a list which was annexed to the representation The report of the Senior Superintendent of Police Gorakhpur was also demanded It is not disputed that the report of the Senior Superintendent of Police has not been supplied to the detenu In paras 9 and 12 of the writ petition, the petitioner has specifically averred that the report of the Senior Superintendent of Police had not been supplied to the petitioner In para 4 of the counter affidavit of Sri R P Sinha District Magistrate Gorakhpur it has been stated that the Senior Superintendent of Police had submitted papers relating to the detention of the petitioner to the District Magistrate with his covering letter dated 15-11 1984 In para 8 of the same counter affidavit, it is said that no reliance was placed by the District Magistrate on the report of the Senior Superintendent of Police as it was not relevant, and therefore question of supply of the same to the petitioner did not arise It has been said that all the documents relied upon by the District Magistrate were supplied to the petitioner According to the grounds of detention, the only documents supplied to the petitioner are the first information reports of the various incidents and the radiogramme message dated 5-10-1984 A reading of the first information reports and the radiogramme shows that there is no mention in these documents that the various alleged acts of the detenu had horrified the common people of the area and had caused panic and terror amongst the people or as alleged in ground No 4 the trading community was terrified and had closed their shops or as alleged in

Ground No 3 that the election work was completely dislocated and the people were terror striken and started running helter and skelter Ground No 2 and Ground No 3 relate to incidents that occurred in districts Basti and Deoria respectively The reports of those two incidents could not be before the detaining authority unless placed by some one Obviously these two reports and the aforesaid aspect of the grounds had been taken from the report of the Senior Superintendent of Police Gorakhpur If the said report of the Senior Superintendent of Police Gorakhpur did not contain the aforesaid two reports and the facts that the people were terrified the traders closed their shops, the election was dislocated and the whole area was terror stricken due to the activities of the detenu, then evidently it will be a case where there is no material to draw the above inferences A reading of all the grounds will show that the matter of terror has been mentioned as a fact and is not a mere inference of detaining authority This is not the case and this is not possible in fact that the detaining authority could have personal knowledge about these facts and incidents as they relate to various places away from the city of Gorakhpur It, therefore follows that the factual information regarding the traders having closed their shops, election being dislocated people having run helter and skelter the whole area was terrified and the people were panicky must have been contained in the report of the Senior Superintendent of Police and the detaining authority did rely upon the same It is very strange that the report of the Senior Superintendent of Police was not relevant and it was not relied upon by the detaining authority The report of the Senior Superintendent of Police in the above context is very material and relevant as it is this report which in the circumstances of this case contained the basic facts forming the grounds of detention Since this report has not been supplied to the detenu the valuable fundamental right to make an effective representation, as guaranteed under Art. 22(5) of the Constitution has been snatched away

28. In the case of Kibudi Ram Das v State of West Bengal AIR 1975 SC 550 the Hon'ble Court explained what is meant by "grounds on which the order is made in the context of the duties cast upon the detaining authority and the corresponding rights according to the detenu under Art 22(5) of the Constitution The Court ruled that in that context the expression grounds does not merely mean a recital and the reproduction of grounds of satisfaction of the authority in the language of S 3 nor is its connotation restricted to a bare statement of fact but nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention and that is the plain requirement of the first safeguard in Art 22(5) of the Constitution

29 Again what would be comprised in all the basic facts and materials has been elaborated by the Supreme Court in Smt. Icchu Devi Choraria v Union of India AIR 1980 SC 1983 by holding that the documents statements and other materials referred or relied upon in the grounds of detention by the detaining authority in arriving at its subjective satisfaction got incorporated and become parts of the grounds of detention by reference and the right of the detenu to be supplied all such documents, statements and other materials flows directly as a necessary corollary from the right conferred on the detenu to be afforded the earliest opportunity of making a representation against the detention, because unless the former is available the latter cannot be meaning fully exercised

30 Thus it is clear that the expression does not merely mean merely the recital of the ground of satisfaction of the detaining authority but it means all the basic facts and materials which influenced the detaining authority in making the order of detention Again all the documents, statements and other materials referred to or relied upon in the grounds of detention by the detaining authority in arriving at its subjective satisfaction get incorporated and become part of the ground of detention by reference

31 Thus, the failure to supply the relevant materials containing the basic facts forming the grounds of detention by the detaining authority to the detenu vitiates the order of detention

32. In the result the present writ petition succeeds and we allow the same The respondents are directed not to keep Amar Mani Tripathi detenu under detention any

longer in pursuance of the detention order dated 17 11 1984 passed by the District Magistrate Gorakhpur under S 3(2) of the National Security Act and affirmed by the State Government It is made clear that if the petitioner s detention is required under some other authority of law the order passed by us shall not entitle him to be physically released

Petition allowed

1986 ALL. L. J 507

B D AGARWAL J

Sarnam Singh Petitioner v Smt. Puspa Devi and others Respondents

Election Petn No 54 of 1985 D/ 17 1 1986

Constitution of India, Art 191(1) — Representation of the People Act (43 of 1951), S 100(1)(d)(i) — Teacher in Higher Secondary School — Not disqualified from contesting election to legislative Assembly

A teacher serving in a Higher Secondary School in U P to which the Intermediate Education Act or the Act 5 of 1982 is applicable can contest an election to the U P legislative assembly The control of the State Government though expanding vis a vis the Committee of Management constituted under the Scheme of Administration framed in accordance with the provisions of the Intermediate Education Act or the Commission created under the U P Act 5 of 1982 is not such as might give rise to any conflict between the personal interest of a person placed in the position of teacher in a Higher Secondary School and his duties as a member of the Legislature and in this manner defeat the central object underlying the statutory disqualification. The acceptance of his nomination is therefore not improper

(Para 56)

Cases Referred Chronological	Paras
AIR 1985 SC 4	33
AIR 1985 SC 211 (1985) 1 SCC 151	18 19 43 53
AIR 1985 SC 364	44
1985 Lab IC 1648 (All) (FB)	42
AIR 1985 Delhi 142 (FB)	23
1984 All LJ 114 (1984) 2 SCC 281 AIR 1984 SC 146	60 61 62 63
1984 All LJ 203 (1984) 1 SCC 251 AIR 1984 SC 385	51 53
1984 All LJ 931 (1984) 4 SCC 251 1985 Lab IC 1196 AIR 1985 SC 167	50
AIR 1984 SC 161 (1983) 2 SCC 33 1983 Lab IC 391	54
AIR 1984 SC 1506 (1983) 3 SCC 52 1983 Lab IC 868	48
1984 Cn LJ 1006 1984 All WC 397	46
1984 Lab IC 1591 1984 Ed Cas 154 (All)	20
AIR 1981 SC 487 (1981) 1 SCC 722	20 22 23
AIR 1981 SC 638 (1982) 1 SCC 442	55
1981 UPLT NOC 123 1981 UPLBEC 521	45
1981 UPLBEC 336 (FB)	30
1980 All LJ 1070 1981 UPLBEC 34 AIR 1981 SC 122	20
AIR 1979 SC 1628 (1979) 3 SCC 489	20 23
AIR 1977 All 539 (FB)	20
AIR 1976 SC 888 (1976) 2 SCC 58 1976 Lab IC 576	20
AIR 1976 SC 1073 1976 Lab IC 698	20
AIR 1976 SC 2283 (1977) 1 SCC 70	13 17 18 43
AIR 1976 SC 2602 (1977) 1 SCC 155	24
AIR 1975 SC 575 (1975) 2 SCC 252	11 55
AIR 1975 SC 1053 (1975) 1 SCC 531	18 43
AIR 1975 SC 1067	11
AIR 1975 SC 1331 (1975) 1 SCC 421 1975 Lab IC 881	20 21
(1971) 3 SCC 870 1970 UJ (SC) 334	13 18
AIR 1970 SC 694	11
AIR 1969 SC 744 1969 Lab IC 1139	13 16 17 18 42
AIR 1969 SC 1201	63 64
(1968) 40 Ele LR 81 (1971) 2 SCA 34	11
AIR 1967 SC 1857	20
AIR 1964 SC 254	13 15 16 18 45
(1962) 23 Ele LR 356 (Cal)	45
AIR 1961 Ker 242	59
AIR 1958 SC 52	12 14 16 17 18
AIR 1958 SC 956	23
AIR 1954 SC 513	63
AIR 1954 SC 653	11
(1953) 6 Ele LR 10 (Election Tribunal)	44

Ashok Khare for Petitioner S N Misra and K N Tripathi for Respondents.

ORDER — This is an election petition under Section 81(1) of the Representation of the People Act 1951

2 Election to the State Legislative Assembly Constituency No 41 Gunnaur village Mirzapur district Badaun took place in early March 1985 Last date for filing nominations was notified as February 6 1985 February 7 1985 was the date for scrutiny of the nomination papers The candidature could be withdrawn up to February 9 1985 The poll took place on March 2 1985 This was followed by counting on 6th March 1985 The respondent No 1 was declared elected having secured 23006 votes the next highest number of votes was obtained by the respondent No 2 being 20735 The margin thus was of 2271 votes The respondent No 8 who was also a candidate in the election got 2606 votes The petitioner who is an elector in this constituency has filed this election petition on the ground that the result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of the nomination of respondent No 8 The respondent No 8 was on the relevant date of nomination and continues to be a teacher in the L T Grade in the Babu Ram Singh Intermediate College Baburala Badaun which according to the petitioner constitutes an office of profit held under the State Government as such he was disqualified from seeking election of the State Legislative Assembly in view of Article 191 (1)(a) of the Constitution The relief claimed in the petition is declaration that the election of the respondent No 1 is void and also that the respondent No 2 is the person duly elected

3 The respondent No 1 has put in contest to the petition She refutes that the respondent No 8 held an office of profit under the State Government or was on that account disqualified from seeking election or that the result relating to her has been materially affected due to nomination of the respondent No 8 being accepted

4 Upon pleadings the following issues were framed for decision —

1 Whether Sri Mahavir Singh (respondent No 8) a teacher in the Babu Ram Singh Intermediate College Baburala Badaun held office of profit under the State Government on the date of his nomination for election to the Legislative Assembly in U P ?

2 Whether the result of the election in so far as it concerns the respondent No 1 the returned candidate is materially affected on account of the nomination of the respondent No 8 having been accepted?

3 Whether in the event of nomination of the respondent No 8 not being accepted the respondent No 2 would have been declared elected?

4 To what relief if any is the petitioner entitled?

5 Parties have not sought to adduce evidence oral or documentary in this case except that the petitioner has filed copies of certain Government Orders issued from time to time relating to the conditions of service of teachers

6 I have heard learned counsel for the parties

Findings

Issue No 1

7 Section 100(1)(d)(i) of the Representation of the People Act, 1951 relied upon for the petitioner enacts as one of grounds to set aside the election that the result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of any nomination Article 191 (1) of the Constitution laid down in so far as material that a person shall be disqualified for being chosen as and for being a member of the Legislative Assembly of a State

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule other than an office declared by the legislature of the State by law not to disqualify its holder

8 For a member of either House of Parliament there is similar provision contained in Article 102(1)(a) except that the reference therein is to declaration by law of Parliament Article 58 specifies qualifications for election as President Clause (2) thereof which is relevant in the context laid down

A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments

9 Analogous provision is contained in Article 66(4) in relation to the election of Vice-President

10 Suffice it may to note at this stage that while in case of a membership of State Legislature or of Parliament for that matter the disqualification arises in the event of holding an office of profit under the Government, in relation to the President/Vice President the area of disqualification is much wider embracing as it also does any office of profit under any local or other authority subject to the control of Government a feature conspicuous by its absence in regard to the membership of the State Legislature Admittedly there is no law of the State thus far providing that an office such as we are concerned with in the instant case does not disqualify its holder

11 Controversy does not exist on the point that in the present there is an office which exists independently of the respondent No 8 filling in it it is a position or place to which certain duties are assigned Mahadeo v Shantibhai (1968) 40 Ele LR 81 (SC) Smt Kanta Kathuria v Nanak Chand Sharma AIR 1970 SC 694 To this office is attached pecuniary gain in the form of fixed payment regularly obtainable as remuneration the quantum whereof is immaterial for these purposes and that constitutes the profit Ravanna Subanna v G S Kagerappa AIR 1954 SC 653 Karbhari Bhimaji Rohamare v Shankar Deo Genuji Kolha AIR 1975 SC 575 Divya Prakash v Kulter Chand Rana AIR 1975 SC 1067

12 The crux of the dispute is whether the office of profit in question in held under the State Government within the meaning of Article 191(1)(a) of the Constitution The law is settled that for holding an office of profit under the Government, one need not be in the service of Government and there need be no relationship of master and servant between them The basic stand point is to prevent conflict between interest and duty which would otherwise inevitably arise and to prevent the member concerned from being exposed to the temptation or even to semblance of temptation In Abdul Shakur v Rikhab Chand AIR 1958 SC 52 the test was thus formulated —

The appellant is neither appointed by the Government of India nor is removable by the Government of India nor is he paid out of the revenues of India The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor

13 This was reiterated in Gurugovinda Basu v Sankari Pd Ghoshal AIR 1964 SC 254 D R Gurushantappa v Abdul Khaddus Anwar AIR 1969 SC 744 Both took the view that a payment of remuneration not from public revenue is a neutral factor The various factors need not co-exist The power to appoint direct and remove to regulate and discipline may be good indicia but not decisive as pointed out in D R Gurushantappa (supra) (See also Shivamurthy Swami Inamdar v Ageti Sangamine Andanppa (1971) 3 SCC 870) Observed thus the Supreme Court in Madhukar G E Pankakar v Jaswant Chobbiladas Rajani (1977) 1 SCC 70 at page 57 (AIR 1976 SC 2283 at P 2296) —

The core question that comes to the fore from the survey of the panorama of case-law is as to when we can designate a person gainfully engaged in some work having a nexus with Government as the holder of an office of profit under Government in the setting of disqualification for candidature for municipal or like elections The holding of an office denotes an office and connotes its holder and this duality implies the existence of the office as an independent continuity and an incumbent thereof for the nonce

Certain aspects appear to be elementary For holding an office of profit under Government one need not be in the service of Government and there need be no relationship of master and servant (Gurugovinda) Similarly we have to look at the substance not the form Thirdly all the several factors stressed by this Court as determinative of the holding of an office under Government, need not be conjointly present. The critical circumstances not the total factors, prove decisive A practical view not pedantic basket of tests, should be

guide in arriving at a sensible conclusion

14 Allied to this is the other aspect of the matter hinted at the outset but which needs close consideration in view of its distinctive importance to wit that unlike the case of the President and the Vice President of the Union no disqualification arises in case of membership of the State Legislature on account of holding an office of profit under a local or other authority under the control of Government In Abdul Shakur v Rikhab Chand (AIR 1958 SC 52) (supra) the appellant was appointed by the administrator of the Durgah as manager of a school run by a committee of Management formed under the Durgah Act. 1955 It was contended for the respondent in that case that the Government of India had the power to appoint and remove members of the committee of management as also the power to appoint the administrator in consultation with the committee therefore the appellant was holding office under the Government of India. This contention was repelled, the Supreme Court pointed out the distinction between the holder of an office of profit under the Government" and the holder of an office of profit under some other authority subject to the control of Government It was observed —

No doubt the Committee of the Durgah Endowment is to be appointed by the Government of India but it is a body corporate with perpetual succession acting within the four corners of the Act Merely because the committee or the members of the committee are removable by the Government of India or the committee can make bye-laws prescribing the duties and powers of its employees cannot in our opinion convert the servants of the committee into holders of office of profit under the Government of India. The appellant is neither appointed by the Government of India nor is removable by the Government of India nor is he paid out of the revenue of India. The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor But the appointment of the appellant does not come within this test

15 Sri A. Khare learned counsel appearing for the petitioner who argued the case with great ability and industry drew reference to Gurugobinda (AIR 1964 SC 254) (supra) and urged that this is in his favour I find no difference on principle laid therein Under consideration therein was the case of an auditor appointed under section 619(2) Companies Act, 1956 in a Government Company whereof 100% shares were held by the Central Government The appointment of the appellant rested solely with the Central Government and so also his removal from office In the performance of his functions an auditor in the appellants position is controlled by the Comptroller and Auditor General who himself, it was observed, is the holder of an office of profit under the Central Government It was in face of such pervasive control in relation to an appointee of Government in a Central Government undertaking that the appellant was held covered under Article 102(1)(a) of the Constitution observing that where the several elements the power to appoint the power to dismiss the power to control and give direction as to the manner in which the duties of the office are to be performed, and the power to determine the question of remuneration are all present in a given case then the officer in question holds the office under the authority so empowered" That was precisely such a case and as we shall see later this does not avail the petitioner in the present

16 In D R Gurushantappa v Abdul Khuddus Anwar AIR 1969 SC 744 the Supreme Court considered whether a candidate who on the date of scrutiny of the nomination papers was employed in a company owned by the Government was disqualified under Articles 102(1)(a) and 191(1)(a) of the Constitution After discussing Gurugovinda Basu (AIR 1964 SC 254) and Abdul Shakur (AIR 1958 SC 52) (supra) the conclusion reached was that the mere fact that the Government had control over the Managing Director and other Directors as well as the power of issuing directions relating to the working of the company would not lead to the inference that every employee of the company was under the control of the Government The principle enunciated, as appearing in para

11 cited for the respondent by Sri S N Misra assisted by Sri K N Tripathy arguing with dexterity and brevity is as follows —

Thus in the case of election as President or Vice President the disqualification arises even if the candidate is holding an office of profit under a local or any other authority under the control of the Central Government or the State Government whereas in the case of a candidate for election as a Member of any of the Legislatures no such disqualification is laid down by the Constitution if the office of profit is held under a local or any other authority under the control of the Government and not directly under any of the Government This clearly indicates that in the case of eligibility for election as a member of Legislature the holding of an office of profit under a corporate body like a local authority does not bring about disqualification even if that local authority be under the control of the Government The mere Control of the Government over the authority having the power to appoint dismiss or control the working of the officer employed by such authority does not disqualify the officer from being candidates for election as a member of the Legislature in the manner in which such disqualification comes into existence for being elected as the President or the Vice President The Company in the present case no doubt did come under the control of the Government and respondent No 1 was holding an office of profit under the Company but in view of the distinction indicated above it is clear that the disqualification laid down under Article 191(1)(a) of the Constitution was not intended to apply to the holder of such an office of profit

17 The question arose in Madhukar G E Pankakar v Jaswant Chhobildas Rajani (AIR 1976 SC 2283) (supra) in relation to the appellant working as a panel doctor appointed under the Employees State Insurance Scheme as to whether he held office of profit under the State Government This was answered in the negative emphasising that indirect control though real is insufficient Krishna Iyer J speaking for the Division Bench observed —

In our case Government does have partly direct and partly indirect control but the conclusion is not inevitable because the doctor is put in the list not by Government directly but through a prescribed process where the Surgeon General has a presiding place How proximate or remote is the subjection of the doctor to the control of Government to bring him under Government is the true issue Gurushantappa (AIR 1969 SC 744) has highlighted this fact of the question Indirect control though real is insufficient flows from the ratio of Abdul Shakur (AIR 1958 SC 52) The appellant as elaborated by Ray J (as he then was) in the Calcutta case was not a servant of Government but a private practitioner was not appointed directly by Government but by an officer of government on the recommendation of a committee was paid not necessarily out of government revenue and the control over him in the scheme was vested not in Government but in an Administrative Medical Officer and Director whose position is not qua government servant but creatures of statutory rules The ultimate power to remove him did lie in Government even as he enjoyed the power to withdraw from the panel The mode of medical treatment was beyond Government s Control and the clinic was a private one In sum it is fair to hold that the insurance medical practitioner is not a free lancer but subject to duties obligations control and rates of remuneration under the overall supervision and power of Government While the verdict on being under the Government is a perilous exercise in judicial brinkmanship especially where the pros and cons are evenly balanced the ruling in Kanta which binds us and the recondite possibility of conflict of duty and interest for a Municipal president who is an insurance medical practitioner under an arrangement with Government induce us to hold that though the line is fine the appellant is not functioning under the Government in the plenary sense implied in electoral disqualification After all the means i e the ban on candidature must have a substantial link with the end viz. the possible misuse of position as insurance medical practitioner in doing his duties as Municipal President "

18. The Supreme Court considered this aspect over again recently in Ashok Kumar Bhattacharryya v Ajay Biswas (1985) 1 SCC 151 (AIR 1985 SC 211) in which the issue raised was whether an Accountant-in-charge of the Agartala Municipality held an office of profit within the meaning of Art 102(1)(a) of the Constitution It was found that at the

relevant time the respondent held an office of profit under a local municipality The appointment of person to the category of post held by respondent No 1 was to be made by the Commissioner of Municipality but this was subject to the confirmation by the State Government He could be removed by the Commissioners again subject to the sanction of the Government He was paid out of the municipal funds which the Municipality was competent to raise The finding was that though Government exercised certain amount of control and supervision the respondent was not an employee of the Government nor was he required to perform governmental functions for the Government Discussing the case of Gurugobinda (AIR 1964 SC 254) Abdul Shakur (AIR 1958 SC 52) D R Gurushantappa (AIR 1969 SC 744) Madhukar G E Pankakar (AIR 1976 SC 2283) their Lordships laid down that—

The true principle behind this provision in Art 102(1)(a) is that there should not be any conflict between the duties and the interest of an elected member Government controls various activities in various spheres and in various measures But to judge whether employees of any authority or local authorities under the control of Government become Government employees or not or holders of office of profit under the Government, measure and nature of control must be judged in the light of the facts and circumstances in each case so as to avoid any possible conflict between personal interests and duties This position was further examined in the case of Surya Kant Roy v Imamul Hai Khan (AIR 1975 SC 1053) There under Bihar and Orissa Mining Settlement Act 1920 a Board called the Mines Board of Health may be established to provide for the control and sanitation of any area within which the persons employed in a mine reside and for the prevention therein of the outbreak and spread of epidemic diseases After analysing the facts of that case this Court held that the mere fact that the candidate was appointed Chairman of the Board by State Government would not make him a person holding an office of profit under the State Government There the Supreme Court referred to the decision in the case of Shivamurthy Swami Inamdar v Agadi Sanganna Andanappa (1970-3 SCC 870) This Court in Surya Kant Roy v Imamul Hai Khan observed, (1975) 2 SCR 909 at page 911 (AIR 1975 SC 1053 at p 1054) as follows ((1975) 1 SCC 531 at p 533 para 6) (AIR 1975 SC 1053 at p 1054)

Here again it is to be pointed out that the Government does not pay the remuneration nor does the holder perform his functions for the Government To hold otherwise would be to hold that local bodies like Municipal Councils perform their functions for the Government though in one sense the functions they perform are governmental functions

And in para 21 it was pointed out —

for determination of the question whether a person holds an office under the government each case must be measured and judged in the light of the relevant provisions and the sections and having regard to the provisions of the Bengal Municipal Act 1932 as extended to Tripura the provisions of which have been set out hereinbefore we are of the opinion that the Government does not control officers like respondent 1 and that he continues to be an employee of the Municipality though his appointment is subject to the confirmation by the Government He does not cease to be an employee of the Municipality Local Authority as such or any other authority does not cease to become independent entity separate from Government Whether in a particular case it is so or not must depend upon the facts and circumstances of the relevant provisions To make in all cases employees of Local Authorities subject to the control of Government holders of office of profit under the Government would be to obliterate the specific differentiation made under Art 58(2) of the Constitution and to extend disqualification under Art 102(1)(a) to an extent not warranted by the language of article

19 The governing criteria has thus been held to be the degree of control the Government has over the concerned authority the extent of control is the measure The composition of the authority is relevant the degree of dependence on Government for its functional aspect and its financial needs ought be looked into as also whether the body is discharging important governmental function This would depend considerably on the facts and circumstances of each case The person concerned need not be placed directly under

the State Government it may sometimes be that the form is of a body corporate independent of the Government but in substance it may be just the alter ego of the Government itself. The submission of Shri Mishra that the concept of instrumentality is relevant for purposes of the enforcement of the Fundamental Rights or giving effect to the Directive Principles of State Policy and for the exercise of the writ jurisdiction, but not in relation to Art. 191(1)(a) or 102(1)(a) for that matter may not be acceded to It is true that these Articles do not refer in terms to local or other authority as is done in Art. 58(2) or 66(4) but, if the control of the authority is in form alone and not deep or pervasive and the extent or measure of Government control is preponderating it would amount virtually as of the State Government itself In Agartala Municipality (AIR 1985 SC 211) also there is recognition given to the fact that the term office of profit under the Government used in clause in Art. 191(1)(a) is an expression of wider import than a post held under the Government which is dealt with in Part XIV of the Constitution

"The measure of control by the Government over a Local Authority should be judged in order to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the elected bodies

20 Sri Khare contends that in substance though not in form the respondent holds the office under an instrumentality of the State Government and hence this be taken for all practical purposes as being under the State Government It is not controverted that the committee of management envisaged under the Intermediate Education Act 1921 pertaining to a private recognised and government aided educational institution does not have the status of a statutory body That indeed stands concluded by the decisions of the Supreme Court in the cases of Vaish Degree College (1976) 2 SCC 58 (AIR 1976 SC 888) Arya Vidya Sabha, AIR 1976 SC 1073 Smt. J Tiwari, 1981 UP LBEC 34 (1980 All LJ 1070) (SC) A Full Bench of this Court was of the view in Aley Ahmad Abidi, AIR 1977 All 539 that a recognised Intermediate College which is required by S 16-A to have a scheme of administration cannot by any stretch of imagination be regarded as a statutory body The discussion on the subject in Agarwal Diagambar Jain Samiti v Badri Pd. Srivastava, 1984 Ed Cases 154 (1984 Lab IC 1591) (All) is also apposite The submission made by Sri Khare that though not a statutory body the committee of management be treated an instrumentality of the State Government is, in my view too specious to be accepted He seeks to derive support for this argument from the pronouncement of the Supreme Court in Rajasthan State Electricity Board, AIR 1967 SC 1857 Sukhdev Singh, (1975) 1 SCC 421 (AIR 1975 SC 1331) International Airport Authority (1979) 3 SCC 489 (AIR 1979 SC 1628) Ajay Hasia, (1981) 1 SCC 122 (AIR 1981 SC 487) which in reality do not assist in the facts and circumstances hereof In International Airport Authority addressing to the question how to determine whether a corporation is acting as an instrumentality or agency of the government the Supreme Court proceeded to indicate the different tests, apart from ownership of the entire share capital —

" if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of Government. It may therefore, be possible to say that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character But "a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action. Vide Sukhdev v Bhagatram. So also the existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporation s ties to the State. "

There is also another factor which may be regarded as having a bearing on this issue and

it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must held to a conception of state action where public functions are being performed Vide Arthur S Miller The constitutional Law of the "Security State It may be noted that besides the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions If the functions of the corporation are of public importance and closely related to Governmental functions it would be relevant factor inclassifying the corporation as an instrumentality or agency or Government This is precisely what was pointed out by Mathew J in Sukhdev v Bhagatram, (AIR 1975 SC 1331) where the learned Judge said that institutions engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed government agencies Activities which are too fundamental to the society are by definition too important not to be considered government functions.

21 With reference to the functional test, the Supreme Court laid down —

the decisions show that even this test of public or governmental character of the functions is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity would be an instrumentality or agency of Government by reason of carrying on such activity In fact, it is difficult to distinguish between governmental functions and non governmental functions perhaps the distinction between governmental and non governmental functions is not valid any more in a social welfare State where the lausez faire is an outmoded concept and Herbert Spencer's social states has no place The contrast is rather between governmental activities which are private and private activities which are governmental. (Mathew J) Sukhdev v Bhagatram, (AIR 1975 SC 1331) But the public nature of the function, if impregnated with governmental character or "tied or entwined with government" or fortified by some other additional factor may render the corporation an instrumentality or agency of Government. Specifically if a department of Government is transferred to a corporation it would be a strong factor supportive of this inference "

22 The observations were approved subsequently in Ajay Hasia (AIR 1981 SC 487) with the comment that test are not conclusive or clinching but they are merely indicative indicia which have to be used with care and caution because while stressing the necessity of a wide meaning to be placed on the expression other authorities it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression.' A wide enlargement of the meaning, it was added, must be tempered by a wide limitation The tests were summarized as under in Ajay Hasia —

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (1979 3 SCC 489 at p 507) (AIR 1979 SC 1628 at p 1638) (para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation it would afford some indication of the corporation being impregnated with governmental character (SCC p 508) (at P 1639 of AIR) (para 15)

(3) It may also be a relevant factor — whether the corporation enjoys monopoly status which is State conferred or State protected (SCC p 508) (at p 1639 of AIR) (para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality (SCC p 508) (at p 1640 of AIR) (Para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government (SCC P 509) (at p 1640 of AIR) (para 16)

(6) Specifically if a department of Government is transferred to a corporation it would be a strong factor supportive of this inference" of the corporation being an instrumentality or a agency of Government."

23 The educational institution in the present is run through a committee of management constituted by a society which is incorporated under the Societies Registration Act, 1860 There is no question of holding a share capital by Government nor does the society or the Committee have State conferred or State protected monopoly status There is substance in the contention that the function performed by it is of great public importance and partakes the character of governmental function Education is indisputably basis to the realization of the goals set out in the Preamble to the Constitution One of the cherished objects is to secure to all its citizens the liberty of thought expression belief faith and worship Nothing provokes and stimulates thought and expression in people more than education That the welfare State as ours postulates that the State must try its best to make effective provisions to secure education for its citizens depending on its capacity and the constraints of development hardly admits of two opinions Article 41 of the Directive Principles of State Policy envisages this plainly promotion of educational and economic interest of the Scheduled Castes Scheduled Tribes and other weaker sections is a special responsibility entrusted to the State (Article 46) In Re Kerala Education Bill, AIR 1958 SC 956 Article 45 enjoins upon the State to endeavour to provide within a specified period for free and compulsory education for all children until they complete the age of fourteen years I am not impressed by the argument of Sri Mishra that confined as Article 45 is to the imparting of basic education this in any manner erodes against the mandate contained in Articles 41 and 46 To the extent basic education is concerned the provision is special, but the rest are nonetheless fundamental in the governance of the country creating obligations or duties binding on the State But from this the court cannot jump to the conclusion that the committee of management or the society creating it is an instrumentality or agency of the State. Imparting of education may be carried out as well by a private body as an object of charity social welfare or otherwise In International Airport Authority (AIR 1979 SC 1628) endorsed by Ajay Hasia (AIR 1981 SC 487) we have the significant note of caution appended as pointed above that the range of governmental activity is broad and varied and merely because an activity may by such as may legitimately be carried on by Government, it does not mean that a corporation which is otherwise a private entity would be instrumentality or agency of government by reason of carrying on of such activity The public nature of the function assumes significance in this respect if impregnated with governmental character or tied or entwined with government or fortified by some other additional factor [see also Master Vishal Kapoor v Council of India School Certificate Examination AIR 1985 Delhi 142 (FB)].

24 Under the scheme of the Intermediate Education Act, it is incumbent upon the society running an institution to formulate a scheme of Administration which must provide, inter alia, for the constitution of a committee of management vested with authority to manage and conduct the affairs of the institution (Section 16-A (1)) The expression vest is of fluid or flexible content, but even in limited sense depending on the context it may bear the sense of conferring superintendence management or control (Maharaj Singh v State of U P (1977) 1 SCC 155 (AIR 1976 SC 2602) The Committee is composed of persons elected by the general body of the society from among its members besides the Head of the institution and representatives of teachers, the term of the committee is governed by the society s rules and regulations it remains liable to be dethroned on motion of no confidence The Scheme is no doubt subject to Director s approval and in the event of dispute with respect to the management Deputy Director of Education is empowered to determine as to who is in actual control of its affairs (vide 16-A (5)/(7)) but then all this is with the object to promote smooth running of the institution by or at the hands of the management in terms of the Scheme. Section 16-CC inserted recently by the U P Act I of 1981 mandates that the Scheme of Administration in relation to any institution even if recognised before the commencement of (Amendment) Act shall not be inconsistent with the provisions laid down in the Third Schedule. The Schedule enjoins that every scheme of Administration shall—

"(1) provide for proper and effective functioning of the Committee of Management

(2) provide for the procedure for constituting the Committee of Management of periodical elections

(3) provide for the qualifications and disqualifications of the members and office bearers of the Committee of Management and the term of their offices

Provided that no such Scheme shall contain provisions creating monopoly in favour of any particular person caste creed or family

(4) provide for the procedure of calling meetings and the conduct of business at such meetings

(5) provide that all the decisions shall be taken by the Committee of Management and powers of delegation, if any shall be limited and clearly defined

(6) ensure that the powers and duties of the Committee of Management and its office-bearers are clearly defined

(7) provide for the maintenance and security of property belonging to the institution and also for the utilization of its funds and for the regular checking and auditing of accounts "

25. It is rightly pointed by Sri Mishra that the State Government can neither impose a person in the Committee of Management nor can it remove any one from office

26. In view of Regulation 9 (Chapter I) under this Act, the Headmaster or the Principal shall be responsible to the Committee of Management through the Manager for the due discharge of his duties and powers In financial and other matters referred to in Regulation 11 he shall follow the directions of the management Powers duties and functions of the Committee of Management include, as per Regulation 13 –

"(1) appointment, confirmation promotion permission to cross efficiency bar suspension and punishment (including removal and dismissal) of Headmaster Principal, teacher matron, clerk or librarian in accordance with the provisions of the Act and the Regulations.

(ii) To decide appeals against entries made in character rolls of employees by the Head/Manager of the institution

(iii) grant of all leave admissible to the employees of the institution except where such power vests in the Headmaster or Principal

(iv) Control and management of all moneys, securities property and endowments of the institution excluding the Boys Funds and taking of necessary measures for their safe custody investment, repairs maintenance and legal protection

(v) Ensuring proper utilization of maintenance and development grants and reimbursements received from Government.

(vi) Receiving all incomes (excepting stipends scholarship and Boys Funds) subscriptions donations gifts, dividends interest, grants etc for the institution and meeting financial obligations arising out of its duties and functions "

27 The manager is required to prepare and maintain the seniority list showing therein the date from which a teacher is entitled to count his seniority (Regulation 4) Regulation 3 (Chapter II) gives the provisions according to which the seniority list of teachers is to be prepared The Regulations it was urged for the petitioner are made by the Board of High School and Intermediate Education as per section 15 and with the introduction of section 16 by the U P Act 26 of 1975 this can only be with the previous sanction of the State Government. The power exercised by the State Government is clearly intended to safeguard against maladministration and to promote excellence of education which vitally concerns the community but the important fact is that under the overall purview of the statutory provisions, the day to day running of the institution vests in the committee of management Upon irregularity in the management coming to light and remaining unrepaired control may after according opportunity to the Committee of Management to show cause and, for the period specified be taken over by the Authorised Controller but thereafter the management reverts back to the Committee (Section 16-DD) The Authorised Controller is not empowered to transfer any immovable property belonging to the institution (except by way of letting from month to month in ordinary course of management) or to create any charge (Section 16-D(9)) The Act even as amended therefore does not divest the committee of management of its power to manage which of course is exercisable subject to the supervision of the State Government.

28. Sri Khare dilated upon provisions relating to grant in aid to recognised institutions As will appear from para 293 of the Education Code the institution has to agree to certain conditions in order to be eligible to receive the grant. The conditions aim at the prevention of fake receipts the proper utilization of public money and the welfare including discipline health and recreation of students. The annual grant shall ordinarily not exceed one half of the whole tutional expenditure on the institution. Charges on account of management or of buildings and repairs, except petty repairs, cannot be included as tutional expenditure (para 295) In terms of para 296 grants made for the purchase of sites the erection purchase enlargement, improvement or repair of schools or colleges or hostels shall not exceed the total amount constituted for the purpose from other sources. The management has, therefore to arrange for matching amount on its own resources The annual grant, moreover shall not exceed the difference between the approved annual cost of maintenance and the approved income of the institution from fees and private sources or half the amount costs of maintenance whichever is less (para 308) Para 309 (b) provides that no grant is made to any school or college the income of which from all sources is sufficient to maintain it in efficiency The management has, therefore to invest substantially shall to be in position to run the institution

29 Considerable stress was laid by Sri Khare upon the provisions of the U P High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act 1971 (U P Act 24 of 1971) Section 10(1) it was argued, lays down that the State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect to any period after March 31 1971 In construing the effect of this assumption of liability we cannot shut our eye to what is immediately contained in section 10 itself and the scheme of the Act Section 10(2)/(3) provides

"(2) The State Government may recover any amount in respect of which any liability is incurred by it under sub-section (1) by attachment of the income from the property belonging to or vested in the institution as if that amount were an arrear of land revenue due from the institution

(3) Nothing in this section shall be deemed to derogate from the liability of the institution for any such dues to the teacher or employee "

30. The ultimate liability for the payment of salary to teachers and other employees, therefore continues to be of the management. Not only this in the event of failure to pay as per Section 4 the manager is made criminally liable to punishment vide section 11(1) For purposes of disbursement of salaries the management is required by section 5(1) to open in a Scheduled Bank a separate account. The account is to be operated jointly by a representative of the management and by the Inspector the management is to deposit in the said account 80% of the amount received from the students and fees the percentage may be higher if the State Government so directs. The rates of fee are prescribed in government order (vide Section 7 c of the Intermediate Education Act) Section 5 (3) enacts that the entire amount of maintenance grant (which is defined in section 2 (c) as meaning such grant in aid as the State Government by general or special order in that behalf directs to be treated as maintenance grant appropriate to the level of the institution) and the amount of 80% or higher percentage of the grants for remuneration of fee-ships and other similar concessions shall be paid by the State Government with the said account. The expression level of the institution came up for interpretation in State of U P v District Judge, Varanasi 1981 U P LBEC 336 (FB) (para 10) The Act said thus as prompt and regular payment of the salaries due to the teachers and other employees of an institution. The liability which the State Government has taken to itself is significantly not in exoneration of that of the management nor is the management exempt from liability to contribute and perform its part in operating the joint account maintained in the bank. The scheme in short contemplates regulatory supervision of State Government for the social benefit of the teaching community thereby putting a curb against arbitrariness or inefficiency of the management, but without extinguishing its independent entity or pecuniary liability It makes no difference to

say that if the management does not deposit the requisite percentage of the fees the Inspector may recover the fees directly from the students The collection thus made is for and on behalf of the management and it goes to the joint fund

31. For the petitioner it was next argued that a person in the position of the respondent cannot be removed from service without the prior approval of the U P Secondary Education Service Commission and since it is further urged the Commission is an instrumentality of the State Government the respondent holds his office under the State Government This entails a probe into the salient features of the U P Secondary Education Services Commission and Selection Boards Act 1982 (U P Act 5 of 1982) (hereinafter referred to as the Act 1982) which replacing the U P Ordinance No 23 of 1981 came into force with effect from July 14 1981 The Commission which according to section 3(2) is a body corporate is created under this Act, 1982 The Statement of Objects and Reasons appended to this Act reads —

The appointment of teachers in secondary institutions recognised by the Board of High School and Intermediate Education was governed by the Intermediate Education Act 1921 and regulations made thereunder It was felt that selection of teachers under the provisions of the said Act and the regulations was sometimes not free and fair Besides, the field of selection was also very much restricted This adversely affected the availability of suitable teachers and the standard of education it was therefore considered necessary to constitute Secondary Education Service Commission at the State level to select principals, lecturers, Headmasters and L T Grade Teachers and Secondary Education Selection Board at the regional level to select and make available suitable candidates for comparatively lower posts in C T /J T C/ B T C grades for such institutions

32. In para 2 it is stated that the provision made under S 16G (3) authorising the management to impose punishment with the approval of the District Inspector of Schools in matters of disciplinary action was found inadequate and so it was considered necessary that the power to inflict major penalties should be exercised subject to the prior approval of the Commission which would function as independent and impartial body

33. Under the Intermediate Education Act, 1921 (as originally enacted) the power and authority enjoyed by private management of educational institutions was left untouched. But there was a comprehensive amendment of the Act by the U P Act 35 of 1958 and thereafter by the U P Act 26 of 1975 For purposes of selection of Principal or Headmaster of the institution Section 16 E(3) has introduced by the U P Act 35 of 1958 envisaged a Selection Commission of three persons (including a member not belonging to the district but selected by the management) the constitution of the Selection Committee thus lay in the hands of the management and not an extraneous agency The U P Act 26 of 1975 brought in changed composition of the Selection Committee (vide S 16-F) providing that to select the Head of an institution it shall comprise of the President of the Committee of Management another member of the management and three experts nominated by the Deputy Director from the panel This was an innovation More significant than this was the fact that earlier the Selection Committee deputed by the management could base its recommendation upon the assessment made on holding the interviews but with the substitution of S 16-E and the new Regulations under the 1975 (Amendment) Act, there came in the requirement of allocation of quality point marks by the Inspector on all such applications and the Selection Committee s assessment was further regulated/restricted to that extent This in short was the existing state of law regarding the appointment by selection when the U P Act 5 of 1982 preceded by the U P Ordinance 8 of 1981 came into being The mischief which the legislature had in mind and sought to mitigate in this realm of selection for appointment is made vocal in the Statement of Objects and Reasons It was felt that the selection of teachers under the provisions of the said Act and the Regulations was sometimes not free and fair Besides the field of selection was also very much restricted It is well settled that it is permissible to refer to the Statement of Objects and Reasons accompanying the Bill for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to

the statute and the evil which the statute sought to remedy Naram Khamman v Pardumar Kumar Jain (1985) 1 SCC 1 AIR 1985 SC 4

34 The composition of the Commission is laid down in section 4 of the Act, 1982 and is as follows

(1) The Commission shall consist of a Chairman and not less than six and not more than eight other members to be appointed by the State Government

(2) Of the members

(a) one shall be a person who occupies or has occupied, in the opinion of the State Government a position of eminence in Judicial Services

(b) two shall be persons who occupy or have occupied, in the opinion of such Government a position or eminence in the State Education Services and

(c) Others shall have teaching experience as—

(i) Professor of any University established by law in Uttar Pradesh or

(ii) Principal of any college recognised by or affiliated to any such University for a period of not less than ten years or

(iii) Principal of any institution recognised under the Intermediate Education Act, 1921 for a period of not less than fifteen years.

35 The tenure of the members is laid in section 5 as six years subject to superannuation at the age of 62 Removal of a member of the Commission may in view of section 6 be directed by the State Government, but only upon specified grounds That includes proved misconduct the procedure for the investigation is prescribed in Rule 11 of the U P Secondary Education Services Commission Rules 1983 as amended by the First Amendment Rules, 1983 dated July 1 1983 The Rule requires investigation by an Inquiry Officer who shall be a sitting or retired Judge of the High Court or a person eligible to be appointed Judge of a High Court Among the powers and duties of the Commission are included as appearing in section 9

(a) to prepare guidelines on matters relating to the method of recruitment and promotion of such categories of teachers as are specified in the Schedule

(b) to conduct examinations where considered necessary hold interviews and make selection of candidates for being appointed as such teachers

(c) to select and invite experts and to appoint examiners for the purposes specified in clause (b)

(d) to make recommendations regarding the appointment of selected candidates and their promotion

(e) to advise the management in matters relating to dismissal, removal or reduction in rank of teachers specified in the Schedule "

36 The vacancy has to be notified by the management failing which this may be done by the District Inspector of Schools. The Commission draws a panel, after interviewing a the candidates with or without examination as it deems fit the panel comprises of candidates found by the commission upon its assessment as the most suitable for appointment. The management may appoint a teacher on of after July 10 1981 only on the recommendation of the Commission vide section 11/16 If any vacancy is to be filled by promotion, all teachers working in L T or C T Grade who possess the minimum qualification and have put in at least 5 years continuous service as teacher shall be considered by the Commission for promotion (Rule 9) The management may make ad hoc appointments in certain contingencies the details whereof need not be enumerated (section 18)

37 Taking the overall view consideration being had to the composition of the Commission comprising a person of eminence in judicial services and eminent educationist, the fixed tenure assigned to them, the high level inquiry envisaged in the event of alleged misconduct, the powers conferred and the degree of freedom enjoyed by the Commission in making the recommendation/selection on the wide experience and the best judgment of its members, I am unable to subscribe to the argument for the petitioner that the Commission is an instrumentality of the State Government The nature of the functions discharged by the Commission is of public importance undoubtedly but it is not tied or entwined with government such as to the reduce the Commission to the position of a government department. The Commission is

designed indeed on the pattern of the Public Service Commission operating in the field of public services under the Constitution

38 Reverting back to the issue of power regarding removal referred to for the petitioner section 21(1) of the Act, 1982 provides

"No teacher specified in the Schedule shall be dismissed or removed from service or reduced in rank and neither his emoluments may be reduced nor he may be given notice of removal from service by the management unless prior approval of the Commission has been obtained."

39 The Schedule includes Trained Graduates Grade Teachers of Higher Secondary School such as the respondent. Section 21(1) does not strike material departure from the position earlier obtaining except that the prior approval substituted is of the Commission in place of that of the District Inspector of Schools Section 16-G (3) of the Intermediate Education Act as amended by the Amendment Act (35 of 1958) made provision that the Principal, Headmaster or teacher could not be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments or served with notice of termination of service except with the previous written approval of the Inspector This in substance was retained by the subsequent Amendment Act No 26 of 1975 Regulations 24 to 38 (Chapter III) embody the principles of natural justice pertaining to enquiry and opportunity to show cause to the delinquent These safeguards remain in force still by virtue of section 32 of the Act, 1982 — there being nothing inconsistent thereto provided in the new Act The significant fact is that neither before the enforcement of the Act, 1982 nor prior to this could there be action taken for the termination of the services of a teacher by removal etc or otherwise except in a move to this effect by the committee of management The Commission cannot, in other words, dispense with the services of a teacher on its motion or initiate action in this respect nor could the Inspector do that either The initiation is of the management and it remains free in that behalf. The Commission serves as watch-dog with the object to avert arbitrariness of the management but it cannot, within the purview of the Act, acting on its own direct a teacher to be dispensed with and so was true earlier in relation to the Inspector

40 Sri Khare points then to the provisions relating to the suspension of a teacher Sub-sections (5) to (8) of section 16-G introduced by the U P Act 26 of 1975 envisage suspension of any Head of institution or teacher by the Committee of management with the order that this should receive subsequent approval of the Inspector within the prescribed period If not approved, the order lapses There being nothing to the contrary contained in the Act, 1982 these provisions still continue in force The initiative in this respect also rests with the management the Inspector may not suspend on his own If the management chooses not to act in its discretion, the Inspector cannot force his will. It would not be right to maintain, therefore that the management is denuded of its powers or reduced to a non entity

41 On the date of scrutiny the respondent was employed as a trained Graduate Grade Teacher in the private recognised and Government aided Higher Secondary School. The past history of the service of the respondent was that he was appointed by the then committee of management of this institution on July 8 1961 in the L T Grade and confirmed thereto with effect from July 8 1962 Under the Intermediate Education Act, (as amended by the U P Act 35 of 1958) and, then in force too section 16-A ordained that the Scheme of Administration shall amongst other matters provide for the constitution of a Committee of Management vested with authority to manage and conduct the affairs of the institution In every recognised institution, as I mentioned above there had to be constituted by the management a selection committee for the purpose of selecting candidates for appointment as teacher in the institution The head of the institution was to be ex officio member of the committee vide section 16-E (2) This depicts the prominent role then assigned to the management under the Statute in this behalf The recommended candidate had of course to be approved by the Inspector in order to be appointed as teacher— section 16-F(1)(b) The approval could be designed only to serve as a check against nepotism and to ensure that the candidate fulfilled the qualifications prescribed

in the Regulations It is difficult to construe this as amounting to make the teacher an appointee of the State Government.

42 The gradual erosion that has since taken place in the powers of the management is apparent From the management the selection which constitutes an integral element of appointment (see the discussion in Raghunath Prasad Bhatnagar v Administrator Committee of Management, 1985 Lab IC 1648 (All) (FB) Paras 39-43 has passed on to the Commission under the Act, 1982 This Act was in force when the election took place For reasons discussed earlier I have found however that the Commission composed of experts is an independent statutory authority on its own and not an instrumentality of the State Government. To repeat in the words of D R Gurushanta Appa, (AIR 1969 SC 744) mentioned hereinbefore

"The mere control of the Government over the authority having the power to appoint, dismiss or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature "

43 And it is instructive to remind ourselves of the test laid down in the Agartala Municipality case (1985) 1 SCC 151 at p 158 (AIR 1985 SC 211 at pp 215-16)

But to judge whether employees of any authority or local authorities under the control of Government become Government employees or not or holders of office of profit under the Government, the measure and nature of control exercised by the Government over the employee must be judged in the light of the facts and circumstances in each case so as to avoid any possible conflict between personal interests and duties."

See also Surya Kant Roy v Imamul Hai Khan (1975) 1 SCC 531 (AIR 1975 SC 1053) Madhukar G E. Pankakur (1977) 1 SCC 70 (AIR 1976 SC 2283)

44 In Hakikatullah v Nathu Singh (1953) 6 Ele LR 10 (Ele Tri.) cited for the petitioner the effect of approval required to appoint was considered, but that was in a different situation. Section 53 of the Jodhpur Municipal Act, 1943 provided that the President shall be a non-official elected by members of the Board from among themselves subject to the approval of the Government. Section 59 laid down that a President may be removed from the office by Government on the ground of persistent failure to perform his duty and as per section 69 the President was to be a public servant within section 21 Mewar Penal Code These were the clear distinguishing features on which account the President could not be treated as independent of Government. In Manmohan Singh Jatla v Union Territory Chandigarh AIR 1985 SC 364 also relied for the petitioner there was stress laid on the fact that the aided school received 95% of expenses by way of grant from the public exchequer apart from the statutory protection accorded to the employees under the Punjab Aided Schools (Security of Service) Act, 1969 and it is on these facts that the aided school was held to be amenable to the writ jurisdiction of the High Court. The order impugned therein was of the Deputy Commissioner and Commissioner who are statutory authorities operating under the 1969 Act.

45. Learned counsel made his submissions relying on the decision of the Calcutta High Court in Gurugobinda Basu (1962) 23 ELR 356 also The case as mentioned above was taken to the Supreme Court and is reported in AIR 1964 SC 254 The argument is that the Supreme Court left undecided that case of the auditor in the Life Insurance Corporation and hence the observations of the High Court in that behalf are relevant, and, further that the High Court considered it enough for these purposes that there is previous approval of the Central Government required to the appointment. From para 6 of the report in AIR 1964 SC 254 at p 256 it is clear that the Supreme Court felt it unnecessary to consider specifically the Life Insurance Corporation case because on principle that would stand on the same footing as that of the two companies namely the Durgapur Projects Ltd. and the Hindustan Steels Ltd. which are 100% Government Companies (see also para 15) The principle laid down by the Supreme Court therein governs and I have mentioned the same already The Calcutta High Court, moreover observed therein that the holder of an office of profit under a local or other authority however much such authority may be subject to or under the control of Government would be different from the holder of an office of profit under the Government as in such case the power of appointment and dismissal or at any rate

effective and sufficient control in that matter would be in the local or other authority

46 The emphasis which Sri Khare laid on the observation in 1984 All WC 397 (1984 Cri LJ 1006) Rajesh Kumar Shukla v Dr S S Dubey that the issue of appointment letter by the management would have been a ministerial act lacks substance The observation came in an altogether different context Explaining section 12(4) of the U P Higher Education Service Commission Act 1980 the Bench noticed that the provisions of section 12 shall not apply to the appointment of a teacher vacancy in respect whereof had been advertised in accordance with section 31(10) of the U P State Universities Act 1973 at any time before the commencement of this Act and then said that the 1980 Act was promulgated on 3 10 1980 where the advertisement for the appointment to the post of lecturer had been issued in 1976 the selection was held in 1977 when the applicant was found suitable The only thing left was the issue of appointment letter which was a ministerial act and hence section 12 of the Act could not make the order of appointment void

47 Learned counsel for the petitioner also made reference to the Rules of the U P School and College Teachers Gratuity Fund and the Rules of Contributory Provident Fund Insurance-Pension Scheme (The Triple Benefit Scheme) for the employees serving in State aided Education Institutions run by Local Bodies or Private Managements. These rules are in force with effect from April 1 and October 1 1964 respectively These are in the nature of social benefit schemes extended to persons rendering vital service to the public but these do not in substance alter the true character of the employment or convert it into holding the office under the State Government. The management has its hand also in the operation of these schemes the expression "contribution" is defined in Rule 5(b) as meaning the contribution of the management of an institution or of the Government or both as the case may be to the contributory provident fund account of an employee

48 Reference was made pointedly then on the petitioner s behalf to section 9(4) of the Intermediate Education Act That empowers the State Government to take immediate action considered necessary or expedient without reference to the Board but consistent with the provisions of the Act This is in the nature of emergency provision to be availed where the regulation framing authority may not be exercised observing the ordinary procedure The decision in Dr Ramji Dwivedi v State of U P (1983) 3 SCC 52 (AIR 1984 SC 1506) is illustrative of the exercise of this power The setting up of the Commission to select and recommend the candidates for appointment as teachers was in contemplation with a view that this might also cover the existing vacancies the State Government issued a radiogram which put a moratorium upon the filling in of the vacancies The validity thereof was upheld in the light of section 9(4) The provisions made under such an order are given statutory character Krishna Pal Singh v Government of U P 1981 UP LBEC 521 (1981 UPLT NOC 123) It would not be right to place section 9(4) on a footing higher than the regulation framing power conferred under section 15 of the Act except that the formalities observed in the latter stand dispensed with There is no authority to travel outside the purview of the Act This neither subrogates the committee of management nor alters its true character

49 In exercise of the power under section 9(4) the State Government has it is urged framed certain regulations contained in the notification dated 14-3-1984 published in the U P Gazette (Extraordinary) dated 14th March 1984 These are in the nature of a code of conduct meant for teachers to which there may be no exception legitimately taken A perusal thereof shows that these do not aim at subordinating the teachers to Government control the emphasis is upon the maintenance of discipline and devotion to the task assigned and significantly there is no sanction to their enforcement by or at the instance of Government Within the sphere of the syllabi formulated and the test books prescribed by the Board the constitution whereof as section 3 of the Intermediate Education Act shows comprises teachers drawn from various faculties in addition to other experts the teacher remains free to observe his own mode of teaching. The U P Course Books Act, 1979 referred to for the petitioner seeks only to

control the production supply and distribution of and trade and commerce in the prescribed course books

50 Sri Khare sought also to derive support to his contention from the provisions contained in section 16-EE of the Intermediate Education Act for absorption of retrenched employees orders of the State Government under section 9(4) for the reservation in favour of candidates of the Scheduled Castes Scheduled Tribes the provisions made in the U P High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance 1978 and the U P Essential Services Maintenance Act 1966 Each of these deals with particular categories in the backdrop of special situations The mandate contemplated to the committee of management is not of much significance in the overall view of the powers which remain vested therein still Section 16EE aims to give relief to employees retrenched within specified period alone the orders for reservation carry forward the directive contained in Article 46 of the Constitution being by way of providing compensatory treatment the Ordinance 1978 came into being in peculiar circumstances the validity whereof was upheld in Prabodh Verma v State of U P (1984) 4 SCC 251 (1984 All LJ 931) and so far as the U P Essential Services Maintenance Act, 1966 is concerned it has for its object prevention of interruption in the working of the educational institutions for which it treats any service under these institutions as essential service" and empowers the State Government to prohibit strikes in the larger public interest I am unable from these to deduce either that the committee of management is agency or instrumentality of the State Government or that the teacher holds the post under the Government.

51 Learned counsel relies heavily on the pronouncement of the Supreme Court in Biharilal Dobray v Roshan Lal Dobray (1984) 1 SCC 51 (1984 All LJ 203) The respondent in that case was originally employed as an assistant teacher in a Basic Primary School which was being run and managed by the Zila Parishad. On coming into force of the U P Basic Education Act 1972 he became an employee of the Board of Basic Education under section 9(1) of the Act. While holding the post of an assistant teacher as such he filed his nomination for his election to the State Legislative Assembly The Returning Officer rejected his nomination paper on the ground that he was holding an office of profit under the State Government and hence he was disqualified under Article 191(1)(a) for being elected a member of the Legislative Assembly The election petition filed by the respondent was dismissed by this Court but the appeal was allowed by the Supreme Court finding that the respondent held an office of profit under the State Government The decision proceeds on its distinct facts and the distinguishing features are clearly discernible

52 Their Lordships took note of the Statement of Objects and Reasons attached to the Bill which later became the U P Basic Education Act, 1972 The Statement envisages taking over of the responsibility for primary education, resting earlier with the local bodies, by the State Government into its own funds (para 12/13) This was with a view to taking effective steps for securing the object of Article 45 of the Constitution The appointing authority in respect of assistant teachers, it was also noticed, is the District Basic Education Officer who is an officer appointed by the State Government. The officers composing the Board are either the State Government or officers appointed by the State Government The funds of the Board mainly come from the contribution made by the State Government The disciplinary proceedings and punishments have to abide by the Civil Services (Classification, Control and Appeal) Rules as applicable to servants of the State Government. In view of section 13 the Board shall carry out such directions as may be issued to it from time to time by the State Government It was specifically observed in view of the provisions in the Act that —

The school in question is not a privately sponsored institution which is recognised by the Board Even though the representative of the local authorities are associated in the administration of such schools after the Act was passed, the final control of the schools is vested in the Government. "

53 In para 21 thear Lordships have gone so far as to say on the facts thereof that "the Board for all practical purposes is a department of the Government and its autonomy is negligible." This certainly bears no analogy to the status of the committee of management or the Commission we are concerned with in the

present. The Supreme Court distinguished this case in Agartala Municipality (AIR 1985 SC 211) observing that in Biharilal Dobray (1984 All LJ 203) the measure of control was such that U P Education Board was an authority not truly independent of the Government and every employee of the Board was in fact holding an office under the State Government The statement and object of the U P Basic Education Act and sections 4 6 7 13 and 19 all of which have been set out in extenso in that decision make that conclusion irresistible

54 The question in State of Gujarat v Raman Lal Keshar Lal Soni (1983) 2 SCC 33 (AIR 1984 SC 161) also cited for the petitioner was whether the employees transferred to the Gujarat Panchayat Service and working under the local authrotiies formed under the Gujarat Panchayats Act, 1961 were State Government employees This was answered in the affirmative taking into account the features thereof including that the duties required to be performed are in connection with the affairs of the State the fund consists substantially of sums contributed or lent by the State Government and the proceeds of any tax or fee — the imposition whereof is essentially a function of the State the officers of the State service are to be the Secretary of the Taluqa and District Panchayat The Service Rules are particularly required to contain a provision entitling servants of different (sic) in the Panchayat service to promotion to such cadres in the State service and cumulatively these present a clear picture of servants belonging to a centralised service under the State Government That also thus cannot avail the petitioner

55 Both in Karbhari Bhimaji Rohammare (1975) 1 SCC 252 (AIR 1975 SC 575) and Kona Prabhakara Rao (1982) 1 SCC 442 the emphasis is on the appointment by Government and its power to either continue the appointee in office or revoke his appointment at its discretion As in Gopala Kurup v Samual Arulappan Paul, AIR 1961 Ker 242 the aided schools have properties of their own that are conveyed in their names, and the amount paid are treated as those of the institution. The institution as such retains its individuality distinct from a Government run educational institution.

56 In the light of the aforesaid discussion, my conclusions are that control of the State Government though expanding vis a vis the Committee of Management constituted under the Scheme of Administration framed in accordance with the provisions of the Intermediate Education Act or the Commission created under the U P Act 5 of 1982 is not such as might give rise to any conflict between the personal interest of a person placed in the position of the respondent No 8 as teacher in a Higher Secondary School and his duties as a member of the Legislature and in this manner defeat the central object underlying the statutory disqualification The acceptance of his nomination was therefore not improper

57 The issue is decided accordingly

Issues Nos 2 and 3

58 These may be conveniently dealt together

59 The petitioner has sought to found his claim upon section 100(1)(d)(i) of the Act whereunder as mentioned already the ground provided is that the result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of any nomination The burden to establish that improper acceptance of the nomination of the respondent No 9 has materially affected the election result of the returned candidate has indisputedly upon the petitioner I have found above that there was no impropriety in accepting the respondent No 8 s nomination But assuming in the alternative that this was vitiated, the petitioner shall have still to satisfy that this has materially contributed to the success of the respondent No 1 The matter hardly admits of such debate in view of the settled law on the subject

60 The principle applicable has been enunciated by the Supreme Court recently in Chhedi Ram v Jhulmit Ram (1984) 2 SCC 281 (1984 All LJ 114) to which both of them referred. In para 2 thereof it is laid down that

The complication is because of the possibility that a sufficient number of votes actually cast for the candidate whose nomination was improperly accepted might have been cast for the candidate who secured the highest number of votes next to the

successful candidate so as to upset the result of the election, but whether a sufficient number of votes would have so done would ordinarily remain a speculative possibility only In this situation, the answer to the question whether the result of the election could be said to have been materially affected must depend on the facts circumstances and reasonable probabilities of the case particularly on the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes as compared with the number of votes secured by the candidate whose nomination was improperly accepted and the proportion which the number of wasted votes (the votes secured by the candidate whose nomination was improperly accepted) bears to the number of votes secured by the successful candidate If the number of votes secured by the candidate whose nomination was rejected is not disproportionately large as compared with the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes, it would be next to impossible to conclude that the result of the election has been materially affected. But, on the other hand, if the number of votes secured by the candidate whose nomination was improperly accepted is disproportionately large as compared with the difference between the votes secured by the successful candidate and the candidate securing the next highest number of votes and if the votes secured by the candidate whose nomination was improperly accepted bears a fairly high proportion to the votes secured by the successful candidate the reasonable probability is that the result of the election has been materially affected and one may venture to hold the fact as proved Under the Indian Evidence Act, a fact is said to be proved when after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it exists. If having regard to the facts and circumstances of a case, the reasonable probability is all one way a court must not lay down an impossible standard of proof and hold a fact as not proved. In the present case, the candidate whose nomination was improperly accepted had obtained 6710 votes that is, almost 20 times the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes. Not merely that. That number of votes secured by the candidate whose nomination was improperly accepted bore a fairly high proportion to the number of votes secured by the successful candidate — it was a little over one-third. Surely in that situation, the result of the election may safely be said to have been affected."

61 In the case before us out of the total number of valid votes (65 768) the returned candidate namely the respondent No 1 secured 23006 the runner up (the respondent No 2) got the next highest number being 20 735 The margin was of 2271 The wasted votes secured by the respondent No 8 were 3606 only In the light of the proposition of law set out in Chhedi Ram (1984 All LJ 114) (SC) the vital facts in this respect are —

(i) the proportion of throw away votes cast in favour of respondent No 8 as compared to the difference between the votes secured by the returned candidate and the number got by the next in ranking was thin being 1 1/2 times only

(ii) the proportion which the number of wasted votes secured by the respondent No 8 bears to the number of votes secured by the successful candidate is small being 12 1/2% only

62. In contrast in Chhediram the wasted votes obtained by Motiram were 6710 while the margin of difference between the returned candidate (17822) and the candidate next in order (17449) was 373 only It was observed thus that the wasted votes were almost 15 times the difference Further the proportion of votes secured by the candidate whose nomination was impugned to the number of votes secured by the successful candidate was fairly appreciable being over one-third i.e nearly 39% The number of votes secured by the candidate whose nomination is in controversy in the present case being not disproportionately large as compared with the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes, it would be next to impossible to

conclude in the absence of other facts and circumstances in corroboration of a speculative possibility that the result of the election has been materially affected regard being had also to the small proportion which the wasted votes bear to the votes secured by the successful candidate

63 For the contesting respondent it is rightly urged moreover that in Chhedi Ram (1984 All LJ 114) (SC) their Lordships have not dissented from the rule laid in Samant N Balakrishna v George Fernandez AIR 1969 SC 1201 and Vashist Narain s case AIR 1954 SC 513 These were only distinguished upon facts In Vashist Narain s case it was observed by Ghulam Husain J

"But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected That is a matter which has to be proved and the onus of proving it lies upon the petitioner It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation it is not possible to relieve him of the duty imposed upon him by section 11(1)(a) and hold without evidence that the duty has been discharged should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand

64 In Samant Balakrishna (AIR 1969 SC 1201) again there is insistence upon proof the nature and extent whereof is bound to vary The petitioner cannot base the claim on the mere fact that the wasted votes (3306) are greater than the margin (2271) of votes between the returned candidate and the candidate securing the next highest number of votes. In the context particularly of the poll being heavy and the contestant being large in number 16 in all it remains unreasonable to guess that if the respondent No 8 were excluded from the arena of context the wasted votes would have gone to the respondent No 2 thereby enabling him to succeed The burden lying upon the petitioner remains clearly undischarged and the speculative possibility does not attain the level of proof

65 The issues are accordingly decided against the petitioner

Issue No 4

66 Upon the findings recorded on issues Nos 1 to 3 the petitioner is not entitled to any relief

67 The petition is accordingly dismissed. The respondent No 1 is entitled to recover her costs from the petitioner which I assess at Rs 500/ only

Petition dismissed.

1986 ALL L J 526
= AIR 1986 Supreme Court 756

(From Allahabad)

Civil Appeal No 4289 of 1984 D/ 26-10-1984

Smt Rajmata Vijai Raje Sindia and another Appellants v State of Uttar Pradesh and others, Respondents

Constitution of India, Art. 226 — Writ petition against executive action — Limitation — Assumption that 90 days is prescribed period of limitation is not correct — Petition should be filed without laches. Decision of Allahabad H C , Reversed. (Limitation Act (1963), Pre.)

(Para 2)

ORDER — Leave granted

2 It was not disputed before us that there is no limitation prescribed for the purpose of filing a writ petition against any executive action that might be impugned. Ordinarily the writ petitions are expected to be filed without any laches. In this case since the petition was filed not within 90 days, which was erroneously regarded as a prescribed period of limitation the petition has been dismissed on the technical

ground being barred by limitation We may observe that the petition was filed within a period of 4 months The impugned order is therefore set aside and the Writ Petition No 8827 of 1978 filed by Smt Vijai Raje Sindia and anr is remanded back to the High Court for disposal on merits in accordance with law

3 The appeal is disposed of accordingly with no order as to costs

Order accordingly

1986 ALL L J 527

N N SHARMA J

Parsu Ram Das Agarwal and another Appellants v Jagdish Pd. Sahu Respondent.

Second Appeal No 2533 of 1972 D/ 18 10-1985

(A) **Evidence Act (1 of 1872), Ss. 40 to 43 — Relevancy of judgments — Finding recorded by Criminal Court is not relevant in Civil suit — Conviction of accused u/s. 409, IPC — Suit for recovery of amount — Extent of admissibility of judgment of criminal court would be only to show conviction of accused u/s. 409, IPC — Plaintiff is bound to prove factum of embezzlement. AIR 1956 Pat 149, 1972 All LJ 15, AIR 1972 SC 1244, Rel. on.**

(Para 15)

(B) **Evidence Act (1 of 1872), Ss. 17, 18, 43, 80 — Admissions made by accused in his previous examination in criminal proceedings — Relevant and admissible in civil proceedings under Ss. 17, 18 provided such admission is clear and unambiguous and has to be taken as a whole — There is a presumption about genuineness of such statement under S 80 AIR 1941 Sindh 129, AIR 1948 Pat 62, Rel. on (Criminal P C (2 of 1974), S 311)**

(Paras 19, 20, 21)

(C) **Civil P C (5 of 1908), Ss. 100, 101 — Second appeal — Finding of fact — Finding about embezzlement of amount by defendant — It is finding of fact — Same also supportable by evidence — It cannot be disturbed merely on ground that detailed discussion of evidence was not made in the judgments.**

(Para 27)

AD/BD/A405/86/AAJ/SNV

Cases Referred Chronological		Paras
AIR 1979 SC 1128	1979 Cri LJ 921	18
AIR 1977 SC 1712		22
1972 All LJ 15		13
AIR 1971 SC 1244	1971 Cri LJ 1072	14
AIR 1969 SC 423	1969 Cri LJ 1089	17
AIR 1959 All 503		26
AIR 1956 Pat 49		15
AIR 1953 SC 247	1953 Cri LJ 1097	16
AIR 1951 Madh B 92		26
AIR 1950 Assam 79		26
AIR 1948 Pat 62	48 Cri LJ 565	20
AIR 1941 Sind 129	42 Cri LJ 741	20
AIR 1917 Oudh 374		26
AIR 1916 Pat 262	38 Ind Cas 509	26
(1904) ILR 27 Mad 238		17

S N Verma A. Hajela and Vishnu Sahai for Appellants Jagdish Swarup and Vinod Swarup for Respondent.

JUDGMENT — This is a defendant's appeal directed against the judgment and decree dt. 10-7 1972 of Sri Zaheer Hasan, learned District Judge Basti who allowed Civil Appeal No 75-B of 1971 and decreed the suit of respondent for recovery of Rs. 12952/ with costs. Judgment and decree of the trial court dt. 20-10-1962 in Original Suit No 3 of 1956 were reversed. Respondent Sarju Prasad Sahu was Treasurer in district Treasury Basti and in that connection executed an indemnity bond on 20-5-1952 by furnishing security in the sum of Rs. 40 000/ to indemnify State for any embezzlement, etc. in the stamps which were to be sold by Brij Bhushan Lal an ex-officio stamp vendor in District Treasury Basti. Brij Bhushan Lal was working in that capacity even prior to the appointment of plaintiff as Treasurer That appointment was adopted by the respondent also when he stood surety Appellant was a salaried assistant and servant of the U P Government whose surety was plaintiff. The duty of the defendant was to receive a particular quota of stamps given to him by the treasurer or his approved agent etc to sell them to the purchasers and to make over the sale proceeds to the plaintiff's approved agent for being deposited in the treasury or bank and to keep the stamps left over from sale in the almirah in the single lock and to maintain an accurate account about all these transactions. These obligations were legally imposed on the appellant under paras Nos. 82, 84 85 86, 87 87 A, 88 of Chap. III of

the Stamp Manual under the Stamp Act (Act No II of 1899) which need not be extracted here

2 Due to the negligence and illegal encouragement by the Treasury Officer and lack of adequate and efficient supervision by District Magistrate Basti, appellant used to be present at the counting of the stamps in the double lock and used to bring himself stamps from the double lock and put his signature on the register although this practice was not in consonance with the mandatory provisions of the Stamp Manual.

3 Thus the appellant got an opportunity to falsify accounts and misappropriate the stamps from time to time It was in August, 1955 when the Treasury Officer found stamps worth Rs. 13 108/ short and the sale proceeds of the same were embezzled by the defendant who could not account for the stamps of the sale proceeds

4 The Collector compelled plaintiff respondent to make good the loss to the tune of Rs. 13 108/ on 24-9-1955 after the accounts were checked. Appellant tried to commit suicide by sprinkling petrol over his person and setting himself on fire Ultimately he jumped into a well also and had to be taken out in a precarious condition He was prosecuted in a Criminal Court under Ss 409 420 IPC etc and was convicted Plaintiff requested defendant appellant to reimburse him for the aforesaid amount but no payment was done and so the suit was filed by plaintiff for recovery of Rs 13 108/ from defendant. U P State was also made a party to the suit.

5 Defence by the appellant was a denial of the embezzlement. He further maintained that there was no privity of contract between the plaintiff and defendant and if the plaintiff had deposited the money under orders of the Collector the defendant was not liable to reimburse him.

6. It was found by learned Civil Judge that defendant misappropriated stamps worth Rs. 12,952/ from Government Treasury Basti.

7 The Treasury Officer and the District Officer acted in contravention of the Rules Defendant took advantage of their negligence and succeeded in the said embezzlement. He used to be present even at the double lock although it was beyond his duties

8 Learned Civil Judge further found that there was no privity of contract between the plaintiff and the defendant and under the circumstances defendant was not liable to reimburse plaintiff under S 69 of the Contract Act.

9 Learned Appellate Court found that defendant embezzled the stamps worth Rs 12952/

10 He further found that plaintiff was entitled to be reimbursed under S 69 of the Contract Act. In the result the appeal was allowed

11 I have heard learned counsel for the parties and perused the record

12 The only contention pressed before me on behalf of appellant was that plaintiff failed to prove the embezzlement of the disputed amount

13 Sri S N Verma, learned counsel for the appellant took me through the findings recorded by the courts below His contention was that both the courts below erred in taking into account the judgment of learned Assistant Sessions Judge Ext. 11 in Sessions Trial No 57A of 1956 recording the conviction dt 1-6-1957 of the revisionist under S 409 IPC and sentencing him to imprisonment and fine Such judgment of criminal court was irrelevant in a civil proceeding vide Radha Mohan v Bare Lal reported in 1972 All LJ 15 which posited —

The judgment of the criminal court is only relevant about conviction and acquittal The finding recorded by the criminal courts cannot be received as a piece of evidence

14 Reliance was further placed in M/s Karam Chand Ganga Pershad v Union of India reported in AIR 1971 SC 1244 which laid down that decisions of civil courts are binding on the criminal courts but the converse was not true

15 I have carefully gone through these rulings which go to show that the finding recorded by the Criminal Court is not relevant in a civil suit Ss. 40 to 43 of Indian Evidence Act deal with the relevancy of judgments

Obviously the judgment Ext 11 of the Criminal court was relevant only in the civil proceedings to show the conviction of appellant under S 409 IPC It was not admissible for extracting the finding of that judgment in the judgment of civil suit as was done by learned trial court The extent of admissibility of the judgment of criminal court was to show what order was made who the parties to the disputes were what the matter in dispute was and who was held entitled to disputed property as was held in Ramadhar v Janke reported in AIR 1956 Pat 49 So in the present suit also the plaintiff was bound to prove embezzlement of the aforesaid amount by defendant However the learned appellate court did not make such use of this judgment of the criminal court to the extent as was done by the trial court He has given various reasons for coming to the conclusion that the stamps of the aforesaid amount were embezzled by the appellant

16. The next contention of learned counsel for the appellant was about the use of Ext 9 statement made by appellant in the said trial The contention was that such statement under S 342 of old Cr P C (Act No V of 1898) was totally irrelevant in these proceedings That statement was not made on oath and was not usable even in the Criminal court in which it was recorded It should have been ruled out In this connection reliance was placed upon Vijendranjt Ayodhya Prasad v State of Bombay reported in AIR 1953 SC 247 which observed —

Conviction of the accused cannot be based merely on his statement recorded under S 342 which cannot be regarded as evidence But where the prosecution evidence disclosed that the godown was in the possession and charge of the accused and the accused in his examination under S 342 admitted that he was in charge of the godown whereupon no further evidence was led on the point the Magistrate was justified in referring to the statement of the accused under S 342 as supporting the prosecution case concerning the possession of the godown "

17 The next authority relied upon in this connection has been reported in Miss Hardevi Malkani v The State AIR 1969 All 423 In that case prosecution failed to prove the document on which it was based and there was mere admission by accused of execution of document in his statement under S 342 Cr P C aforesaid It was observed that such gap in the evidence of prosecution cannot be filled by any statement made by the accused in his examination under S 342 Cr P C This Court quoted with approval the observations made in (1904) ILR 27 Mad 238

18 The next authority relied upon by learned Advocate for the appellant has been reported in Kishan Chand v Delhi Administration AIR 1979 SC 1128 In that case prosecution failed to prove that the sample contained ingredients which may be adulterated and so it was held that such gap could not be filled in by the stand taken by the accused in his statement. All the ingredients of the offence had to be established by the prosecution apart from the statement of the accused It is correct that statement of an accused recorded in a criminal proceeding is no evidence within the meaning of S 3 sub cl (2) of Evidence Act which means and includes all statements made in a court by witnesses on oath in relation to matters of fact However it does not mean that such statement must be ruled out as irrelevant A mere look at the definition of the word Proved in S 3 of the aforesaid Act shall go to disclose that a fact is said to be proved when after considering matters before it the court either believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists Thus it is obvious that this definition of the word proved relates to the matters before the Court and is not confined to mere evidence The statement of an accused or the result of a local enquiry etc all are matters before the Court which the court is entitled to take into consideration in deciding a case

19 A mere look at S 342 of the old Cr P C or its corresponding provision S 313 Cr P C (Act No 2 of 1974) shall go to disclose that the answers given by the accused in such examination may be taken into consideration in such enquiry or trial and put in evidence for or against him in any other inquiry into or trial for any other offence which such answers may tend to show he has committed It is correct that such statement may not have the force of sworn evidence and a conviction based on such statement alone cannot be maintained

but the court may take into consideration such statement in order to determine whether the issue of the guilt is proved or not and to that extent it stands practically on the same footing as other evidence although technically it is not evidence in the case within the meaning of the Evidence Act In a summons case a plea of guilty by the accused in his examination is sufficient to sustain a conviction

19A. All the authorities cited by learned Advocate for the appellant related to the use of statements of accused in criminal trial No authority was cited to show that such statements made by the accused were not usable as admissions in a civil proceedings The standard of proof required in Civil and Criminal Proceeding is entirely different In a civil case a mere preponderance of probability due regard being had to the burden of proof is sufficient basis of decision and in a criminal case however a high degree of assurance is necessary Benefit of reasonable doubt has to be extended in criminal cases to accused where prosecution must prove the charge beyond reasonable doubt In civil cases parties are tied down by their pleadings It is not so in a criminal case Accused must be presumed to be innocent unless he is proved to be guilty and the onus on the prosecution never shifts Prosecution has to prove its case affirmatively beyond all reasonable doubt

20. Admissions made by an accused in his previous examination in criminal proceedings or insolvency proceedings are relevant and admissible under Ss 17 and 18 of Evidence Act provided such admission is clear and unambiguous and has to be taken as a whole See Mohd. Bakhsh v Emperor AIR 1941 Sindh 129 and Akal Sahu v Emperor AIR 1948 Pat 62

21 There is a presumption about genuineness of such statement under Section 80 of Indian Evidence Act

22. The next contention put forward on behalf of appellant was that even if such statement was to be treated as an admission it could be usable only if defendant could have been confronted with it and an opportunity should have been afforded to him to explain such admission as contemplated by S 45 of the Evidence Act. In this connection reliance was placed upon Sita Ram v Ramchandra Nago reported in AIR 1977 SC 1712 which posited —

An admission is relevant and it has to be proved before it becomes evidence The provisions in Evidence Act that 'admission is not conclusive proof' are to be considered in regard to two features of evidence First what weight is to be attached to an admission In order to attach weight it has to be found out whether the admission is clear unambiguous and is a relevant piece of evidence Second, even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it it is sound that if a witness is under cross examination on oath he should be given an opportunity if the documents are to be used against him to tender his explanation and to clear up the point of ambiguity or dispute, This is a general salutary and intelligible rule Therefore a mere proof of admission after the person whose admission it is alleged to be has concluded his evidence will be of no avail and cannot be utilised against him

23. In the instant case Brij Bhushan Lal defendant P W 1 was confronted with the statement Ext 9 He admitted that it was his statement although he denied that he had misappropriated stamps worth Rs 13108/ He conceded that at the relevant period he was ex officio stamp vendor

24 He further conceded that there could be some clerical mistake in the entries of the accounts

25 Learned Advocate for the appellant further argued that both the courts below did not discuss the evidence on record They wrongly relied on the report Ext 3 drawn by Sri P C Gautam P W 1 who went into the accounts under orders of the higher authorities and testified that from a perusal of the entries made in the register about the receipt of stamps by the defendant he found shortage in court fee stamps of Rs 6588/ and in copying stamps of Rs 6364/ as detailed by him in his report Ext 3 and the supplementary report submitted by him on 21 9-1957 There was nothing in his cross examination to shake his testimony on this point

26. Learned Advocate for the appellant

further argued that the plaintiff s witnesses did not specifically state about the dates when stamps were issued to defendant and the shortage into stamps Courts below simply mentioned that the witnesses have proved the plaintiff s case It could not be regarded as appreciation of evidence as contemplated by O XX R 4 of the Civil P C as pointed out in Abbasali Shah v Mohammad Shah reported in AIR 1951 Madh B 92 and M/s Kuldip Oil Industries Ltd v Ch Pratap Singh AIR 1959 All 505 Mubarak Hussain v Syed Shah Hamid Hussain 38 Ind Cas 509 (AIR 1916 Pat 262) Ambar Ali v Nichar Ali AIR 1950 Assam 79 and Jagan Nath v Bindeshwan Prasad reported in AIR 1917 Oudh 374 So the prayer was that this case should be remanded to the court below for writing a proper judgment

27 All these contennions are not weighty It was plaintiff s case that defendant obtained court fee stamps worth Rs 48 450/ and copy stamps worth Rs 8780/ from 1 7 1955 to 23-8 1955 He made the sale of court fee stamps worth Rs 30607 8 Annas only Thus on 23-8 1955 court fee stamps worth Rs 10182/ and copy stamps worth Rs 8061/ were with him which he could not account for as was obligatory on him A perusal of questions Nos 15 16 17 18 19 and 20 in Ex 9 shall go to disclose that all these details were specifically put to him He admitted to have been the maker of all these entries and alleged that there was some clerical mistake in the said accounts The courts below were not satisfied by the statement of the defendant in this court that this entire shortage was due to clerical errors or someone else was responsible for it This report of Sri P C Gautam Inspector of Stamps P W 1 who went into these accounts as a person skilled in the examination of documents is admissible as secondary evidence of the original accounts under S 65 sub-cl (g) of Evidence Act It was open to him under that section to give evidence as to the general result of examination of the documents done by him specially when his statement on this point could not be shown as incorrect by cross-examination Similarly there is statement of Sarju Prasad Sahu P W 1 who testified about this embezzlement In his examination in chief he testified about the entrustment of these stamps to defendant These statements were believed by learned courts below It was found by learned appellate court that it was not a case of clerical mistake or error but there was shortage and manipulations in the accounts for which defendant was accountable He worked up to 23-8-1955 when Treasury Officer demanded the account from him he refused to comply He took leave for two days and during the same night of 23rd and 24th Aug 1955 made abortive attempts to commit suicide All those circumstances were also considered by learned appellate court Such burns etc on his person were admitted by defendant himself in his cross-examination Defendant admitted that the stamps of the aforesaid value were entrusted to him which he could not account for to the extent given above Under the circumstances it is not possible to hold that the judgment is not supportable on the evidence on record It is purely a finding of fact and it is not for this court in second appeal to disturb the same merely on the ground that a detailed discussion of the evidence was not made by the courts below in their judgments So I find that the aforesaid embezzlement of stamps worth Rs 12952/ by defendant has been made out on evidence on record

28. No argument was addressed before me by learned counsel for the appellant on the point that plaintiff was not entitled to reimbursement In this connection learned appellate court rightly found that plaintiff was bound to pay this loss to the State on account of this embezzlement made by the defendant So on the general principles of equity also plaintiff was entitled to be reimbursed by the defendant for that loss Learned Advocate for respondent also pointed out that the position of defendant was that of agent and of plaintiff was that of Principal and so agent is liable for the loss actually sustained by principal on account of breach of duty by the agent

29 In this connection he also referred to Para 785 at page 469 Vol I of Halsbury s Laws of England Fourth Edition I need not dilate on this point as this liability of defendant to plaintiff was not assailed before me

30 In the result appeal is dismissed with costs

Appeal dismissed

1986 ALL. L J 532

N N SHARMA, J

Munesh Kumar Agnihotri and others Appellants v Lalli Prasad Gupta and others Respondents

Second Appeal No 1654 of 1984 D/ 3-12 1985 *

Civil P C (5 of 1908), O 1, R 10, O 22, R 9 — Impleading of party — Discretionary power of Court under O 1, R 10 — Exercise of — It cannot be exercised to override provision of O 22, R 9 for substitution of a party

Where a respondent was not alive at the time of admission of second appeal against him and his legal representatives were not substituted in his place and application under O 10 R 2 of the High Court Rules was rejected there would be no question of impleading of L.Rs of deceased respondent in exercise of discretionary powers under O 1 R 10 Such discretionary power cannot be exercised to override a plain provision of O 22 R. 9 Case law discussed (Para 21)

Cases Referred Chronological	Paras
1985 Luck Civil Decisions 87	15
AIR 1984 SC 1238	11
AIR 1984 SC 1744	12
AIR 1983 SC 355	9
1983 All LJ 1305	18
1981 All LJ 704 AIR 1981 SC 1400	16
AIR 1976 All 15	13
AIR 1974 All 422	17
AIR 1960 SC 941	21
AIR 1958 Cal 681	19
AIR 1953 All 97	20
AIR 1934 All 25	14

Sidheshwari Prasad and C K Rai for Appellants

JUDGMENT — This application is dt 29-10-1985 and seeks the impleadment of Arun Kumar Gupta and his two brothers and their mother etc enumerated in para No 4 of the application as legal representatives of deceased respondent 1 Sri Lalli Prasad Gupta under Order 1 R 10 sub-rule (2) of the Civil P C

2 It appears that this second Appeal was directed against judgment and decree of Sri C P Misra learned III Addl District & Sessions Judge Varanasi recorded in Civil Appeal No 469 of 1980 Plaintiffs suit for declaration that business of Krishna Lime Company Senpura, Varanasi was joint family business of plaintiff and defendant 4 Prem Shanker Agnihotri and defendants 1 to 3 viz Lalli Prasad Gupta, Kundan Lal and Shitla Prasad had no concern with it and house No C 20/10-B along with its land belonged to the firm Krishna Lime Company Senpura, Varanasi and ejectment of defendant 1 from the aforesaid house in suit was dismissed by both the courts below

3 The impugned judgment was dt 30-3 1984 Report of Stamp Reporter on the memo of appeal was obtained on 3 5 1984 showing limitation in filing the appeal up to 26-7 1984

4 A caveat had been filed on behalf of respondent 1 Lalli Prasad Gupta, (Defendant 1 in the suit) by Sri Murlidhar Advocate on 26-4-1984 Deficiency in court fee was made good on 15 5 1984 The appeal was admitted by my learned brother Sri Umesh Chandra, J on 12 12 1984 It transpired that respondent 1 Sri Lalli Prasad Gupta had died on 8 7 1984 before the admission of this appeal The contention raised on behalf of heirs of respondent No 1 was that the appeal had been admitted against a dead person which was invalid

5 It appears that an application for leave to appeal against the legal representatives had been moved by the appellants on 10-8 1984 which had not been disposed of at the time of admission of this appeal on 12 12 1984 by my learned brother Sri Umesh Chandra J although it had to be disposed of at the time of admission of appeal vide order dt 13 5 1984

6 That application dt 10 8 1984 filed under Chap X R 2 of the High Court Rules was disposed of after contest by me on 4-10 1985 and it was held that the appeal could not be said to have been validly admitted against respondent 1 a dead person and the prayer in the said application to bring heirs of respondent 1 on record was thus rejected.

*Against judgment and decree of 3rd Addl Dist. J Varanasi, D/ 30-3-1984

BD/CD/A879/86/AAJ/SNV

7 The present application was filed on 29 10-1985 with the allegations that it was expedient in the interest of justice to implead the legal representatives of deceased respondent 1 under O 1 R 10 sub-rule (2) C P C The aforesaid provision reads as below

10 Suit in name of wrong plaintiff— (1) where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake and that it is necessary for the determination of the real matter in dispute so to do order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just

(2) Court may strike out or add parties The Court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

8 This prayer was opposed on behalf of the respondents.

9 I have heard learned counsel for the parties on behalf of the applicants reliance was placed upon Bhagwan Swaroop v Mool Chand reported in AIR 1983 SC 355 It appears that in that case a preliminary decree for partition was drawn That decree was against respondents 1 and 2 During appeal respondent 1 died and his legal representatives were not brought on record for more than three years. Afterwards an application was filed by appellant under O 22 R 4 C P C and other application was filed by legal heirs of respondent 1 under O 1 R 10 C P C These applications were rejected by High Court which held that the appeal abated as a whole It was observed by the Supreme Court that such hyper technical approach which could result in miscarriage of justice could not be encouraged. Substantial justice has to be done between the parties and technical rules of procedure should not be given precedence over doing substantial justice in Court

10 Obviously in that case the appeal was not filed against a dead respondent and the legal representatives of respondent 1 himself prayed for addition of their names at the stage of final decree

11 Next authority relied upon by learned counsel for the applicant has been reported in Harjeet Singh v Raj Kishore AIR 1984 SC 1238 In that case second appeal was filed against respondents including respondent No 3 who died pending appeal. An application for substitution of his heirs was filed on Oct 10 1976 although respondent 3 had died on July 6th 1976 It was held that delay in filing application after 90 days but before the expiry of 60 days within which application to set aside abatement had to be moved was allowable

12 Next authority relied upon by learned Advocate for the applicants has been reported in O P Kathpalia v Lakhmir Singh (dead) AIR 1984 SC 1744 It related to an eviction suit under Delhi Rent Act An application for condonation of delay under S 5 of Limitation Act was allowed and it was held that there was sufficient cause for condonation of delay The abatement of appeal could not be ordered and the legal representatives of deceased respondent landlord could be validly substituted.

13 The next authority relied upon has been reported in K B Agarwala v Smt Chandrawati, AIR 1976 All 15 That was also a case of substitution of legal representatives on the death of a party pending proceedings against him

14 Learned counsel for the applicants also relied upon Bala Prasad v Radhey Shiam reported in AIR 1934 All 25 A suit was filed against several defendants, one of whom was dead at the time of filing the suit It was held that as the dead person was not the sole defendant in the suit the court in exercise of its discretionary power under O 1 R 10 C P C could bring on record his legal representative

15 Next authority has been reported in Lucknow Civil Decisions 1985 Smt Asharfi v Jaibal Singh at Page 87 In that case an application for condonation of delay in taking steps for substitution and setting aside abatement was held to be liberally construed

16 The next authority relied upon by learned Advocate for applicants has been reported in Rafiq v Munshi Lal, AIR 1981 SC 1400 In that case the appeal had been dismissed for default of appellant s counsel under O 41 R 17 C P C It was held that a party should not suffer for inaction of his counsel. Obviously this ruling is not in point

17 The next authority relied upon by learned counsel for the applicants has been reported in Khalil Ahmad. AIR 1974 All 422 It was observed in that case that O 1 R 10 sub-r (2) empowers a court to implead any person as a party when such impleadment is necessary to enable the court to effectually adjudicate upon the questions involved in the suit The inaction of plaintiffs to implead or bring on record a person as defendant could not affect the court s power under this Rule

18 It appears that the aforesaid authority has been overruled by a Full Bench Decision reported in Smt Mahendra Kaur v Hafaz Khalil, in 1983 All LJ 1305. In that case there had been an abatement of suit on account of failure to bring legal representatives of deceased on record The proceedings had abated and so it was held that representatives of deceased party could not be substituted in exercise of discretion under O 1 R 10 sub-r (2) C P C If such power was permitted to be exercised under that provision it would necessarily result in nullifying the consequence of abatement in which the heirs were not on record and no explanation had been offered for not doing so It was observed at p 1312 in para 34

From what we have said above we find it impossible to hold that resort to O 1 R. 10(2) can be had by a party when the suit has abated on account of his failure to bring the legal representatives of the deceased on the record and when the application for setting aside the abatement is not allowed.

I am bound by the said view

19 In Sisir Kumar v Manindra Kumar reported in AIR 1958 Cal 681 it was laid down that sub-r (2) of O 1 R 10 C P C does not contemplate substitution It is applicable for addition of a party who is not a plaintiff or defendant in the suit The case of mere substitution was quite distinct from addition of a party

20 In Banke Bihari Lal v Mahadeo Prasad reported in AIR 1953 All 97 the appeal was filed against a party who had died prior to the filing of the appeal and it was held that no order for substitution of his legal representatives could be recorded under O 22 R 9 C P C

21 On a careful consideration of the facts and authorities aforesaid I find that this application is liable to rejection for the following reasons —

1 A comparison of the prayers incorporated in this application as well application under Chap 10 R 2 of the High Court Rules disposed of by me would go to disclose that present application is simply designed to nullify the effect of my earlier order d/ 4-10-1985 which has the force of res judicata as was pointed out in Satyadhyan Ghosal v Smt Deoranjan Debi reported in AIR 1960 SC 941 None of the authorities cited on behalf of the applicants contemplates such case in which an application under Chap X R 2 of the High Court Rules having been rejected addition of the legal representatives could have been done by such circumvention of rule or law The principle of res judicata is applicable even to interlocutory orders

2 Lalli Prasad Gupta was not alive at the time of admission of second appeal against him and his legal representatives were not substituted in his place along with application as contemplated under Chap X Rule 2. of the High Court Rules It has been pointed out in the earlier order that such application for leave to make such legal representative parties to the appeal should be presented along with memorandum of appeal That had not been done

3 It is not an application for setting aside abatement of the appeal against respondent I under O 22 R 9 C P C when there is a specific provision for substitution of a party and that had not been availed of and the application under Chap X R. 2 of High Court

Rules stands rejected there is no question of impleadment of legal representatives of deceased respondent 1 who was already dead at the time of abatement of appeal against him in exercise of discretionary powers under O 1 R 10 C P C Such discretionary power cannot be exercised to override a plain provision of O 22 R 9 C P C

22 In this view of the matter this application is rejected and let the fact be brought to the notice of the Bench hearing the appeal

Application dismissed

1986 ALL L J 535

V K MEHROTRA J

Gopal Krishna Awasthi and etc Petitioners v The District Judge Allahabad and others etc Respondents

Civil Misc Writ Nos 14229 of 1981 and 9765 of 1985 D/ 10-1 1986

(A) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), Ss 16(1) and 12 and 41 — U P Urban Buildings (Regulation of Letting, Rent and Eviction) Rules (1972), R 8 — Notifying deemed vacancy — Member of tenant s family is entitled to notice and hearing

Before notifying a deemed vacancy opportunity must be given to those who are likely to be adversely affected by the order Wife of a deceased tenant is such a person who is entitled to notice Whether she was a tenant, after the death of her husband, within the meaning of S 3(a) of the Act on account of being an heir normally residing with the tenant in the building at the time of his death could only be determined after notice to her and not otherwise As it is imperative to serve notice upon the deceased tenant s wife the mere fact that she had knowledge of the proceedings or that failure to serve a notice upon her did not visit her with any prejudice would hardly matter Giving of a notice to a tenant in the case of a deemed vacancy under S 12(4) has been made imperative by the proviso to S 16(1) A notice under that proviso must be given AIR 1976 SC 1988 AIR 1977 SC 2313 and 1984 All LJ 498 (SC) Rel on

(Paras 13 14 15 17)

(B) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 16 — Notifying deemed vacancy of building — Declaration made without giving notice and without hearing deceased tenant s wife — Declaration is illegal — Delay in filing review petition against order is of no consequence.

(Para 19)

Cases Referred Chronological	Paras
AIR 1986 SC 180 (1985) 3 SCC 545	16
1985 All LJ 900 AIR 1985 SC 1635	13
1984 All LJ 498 AIR 1984 SC 1149	14 17
1984 (UP) RCC 357 (1984) 1 All Rent Cas 590	11
AIR 1977 SC 2313	15
AIR 1976 SC 1988	13

J N Tewari, for Petitioners A N Bhargava, R N Bhalla Sri Dhar and M P Singh for Respondents

ORDER — Sri Babu Ram Awasthi was a practising Advocate who started practice at Allahabad around the year 1932 sometime in the year 1942 he took a portion of Bungalow No 23 Hamilton Road George Town Allahabad on rent as a tenant Smt Kunwar Kishori Razdan is the landlady owning the house She lives at Ujjain in Madhya Pradesh Babu Ram Awasthi decided to retire from active practice on account of old age This was in the year 1972 At one stage he thought of leaving Allahabad He informed the landlady about it It appears however that he changed his mind He is said to have illegally sub-let a portion of the accommodation in his possession to one Gaya Prasad Yadav Advocate without obtaining any permission from the District Magistrate or the consent of the landlady

2 On November 18 1972 Gaya Prasad Yadav made an application for allotment of that portion saying that he has been left in possession thereof by Babu Ram Awasthi on behalf of the landlady and was continuously living therein since 1971 When the Rent Control and Eviction Officer issued a notice to the landlady she filed an objection saying

that the portion was sublet illegally by Sri Babu Ram Awasthi The Rent Control and Eviction Officer however concluded that Gaya Prasad Yadav was in possession of the portion since 1971 with the consent of one Maqbool Hasan agent of the landlady He declared the possession of Gaya Prasad Yadav as authorised by law by order dated July 12 1973 This order was set aside by this Court in Writ No 7074 of 1973 filed by the landlady In this writ petition Sri Babu Ram Awasthi was impleaded as a respondent He had filed an objection in which he said that Gaya Prasad Yadav was not his sub-tenant but had as a matter of fact, been permitted to live in the portion for a short period as he had been thrown out from his house This assertion was noticed by the learned single Judge in his judgment of July 10 1975 (reported in 1976 All WC 137) Gaya Prasad Yadav filed Special Appeal No 2 of 1975 against this judgment which was dismissed by this Court on March 3 1976 The judgment of the single Judge was affirmed

3 In the year 1977 the landlady filed an application for release of the accommodation in the tenancy of Babu Ram Awasthi under section 21 of the U P Act No 111 of 1977 This was registered as case No 17 of 1977 before the Prescribed Authority Sri Babu Ram Awasthi filed an objection dated December 3 1977 in it He denied that he had vacated the premises or that he had permitted a stranger to live in it He also denied the bona fide need of the landlady He further said that he was doing chamber practice and that his sons and daughters continued to visit and reside with him Also that he was living at that time at Bangalore in connection with his treatment though the entire house-hold material as still lying in the house in dispute These assertions were reiterated in an affidavit sworn by Babu Ram Awasthi at Bangalore on November 13 1978

4 Babu Ram Awasthi died on May 3 1979 One of his sons G K Awasthi was transferred to Allahabad under an order dated May 26 1979 The landlady made an application in Case No 17 of 1979 for substituting the heirs of Smt Babu Ram Awasthi in his place in the proceedings Through this application Smt Bhagwati Awasthi and the four sons, namely Sri Krishna Awasthi, Bal Krishna Awasthi Gopal Krishna and Ajai Krishna were sought to be brought on the record as legal representatives of Babu Ram Awasthi The application was supported by an affidavit sworn by the landlady Both in the application and the affidavit it was said that the fact that Sri Babu Ram Awasthi had died on May 3 1979 came to the knowledge of the landlady on July 6 1979

5 On August 4 1979 Dr B K Awasthi, one of the sons of Babu Ram remitted rent of the premises for the period ending July 31 1979 through a Bank Draft for Rs 612/ to the landlady on behalf of his mother This was acknowledged on behalf of the landlady in her letter of August 16 1979 by Sri S N Razdan addressed to Dr Awasthi It was also mentioned in that letter that future remittance be made payable at the State bank of India, Madhav Nagar Branch, Ujjain One Smt. Bimla Kapoor wished to purchase a piece of land, which was not in the tenancy of Babu Ram Awasthi, forming part of 23 Hamilton Road Allahabad On being informed that the house had fallen vacant she made an application for allotment of the house which was in the tenancy of Babu Ram Awasthi This was on August 27 1979 The application was registered as case No 491 of 1979 On September 6 1979 an objection was filed by G K Awasthi, one of the sons of Sri Babu Ram Awasthi saying that there was no vacancy as alleged A local inspection was made by the Senior Inspector of Rent Control of the premises on October 3 1979 under Rule 8(2) of the Rules framed under U P Act No XIII of 1972 Sri G K Awasthi was present at that time On January 2 1981 the Rent Control and Eviction Officer Allahabad passed a detailed order in Case No 491 of 1979 declaring that the disputed portion of the house was vacant On January 5 1981 Smt Vimla Kapoor addressed a letter to Air Marshal Latif the then Chief of the Indian Air Force In it, she mentioned that she had entered into an agreement for purchase of the property with the landlady who was fed up with the tactics of the family of Babu Ram Awasthi to grab the property and had decided to sell it She requested that G K Awasthi who was an Officer in the Indian Air Force be posted away from Allahabad while his brother A K Awasthi another Officer in the Indian Air Force be not posted at Allahabad On

January 20 1981 the landlady made an application in case No 17 of 1977 She said that inasmuch as an order had been passed on January 3 1981 declaring vacancy of the portion in question she did not wish to press her application u/s 21 of U P Act No XIII of 1972 which should be dismissed as not pressed. On January 21 1981 it was dismissed by the Rent Control and Eviction Officer as such The Rent Control and Eviction Officer then passed an order on March 11 1981 releasing the premises in favour of the landlady under section 16 On March 19 1981 the order was assailed by G K Awasthi in a revision under section 18 The District Judge Allahabad who heard this revision dismissed it on November 7 1981 Gopal Krishna Awasthi then filed writ petition No 14229 of 1981 in this Court on November 26 1981 He challenged the orders of January 2 1981 March 11 1981 and November 7 1981 He also made an application for interim orders This Court stayed his dispossession by an order of November 26 1981 itself (which was later confirmed after hearing parties on September 6 1982)

6 Smt Bhagwati Awasthi widow of Babu Ram Awasthi made an application under S 17(5) seeking cancellation of the order dated March 11 1981 declaring the premises to be vacant It was registered as case No 188 of 1981 On July 14 1981 the Rent Control and Eviction Officer dismissed this application Smt Bhagwati Awasthi challenged it in a revision (No 522 of 1982) which was however dismissed by the IV Additional District Judge Allahabad on April 16 1985 She then filed Writ Petition No 9765 of 1985 challenging these orders The petition was admitted and directed to be connected with the earlier writ petition (No 14229 of 1981) of G K Awasthi by an order of July 15 1985 The same day an interim order was passed by this Court in this writ petition staying the eviction of the petitioner from the premises Smt Kunwar Kishori Razdan and Smt Vimla Kapoor are respondents 3 and 4 in both the writ petitions They have filed counter affidavits in both the cases The petitioners have replied to them through their rejoinder affidavits some supplementary affidavits have also been exchanged between the parties

7 Before proceeding to consider the submissions made by the counsel for the parties one more fact may be noticed And it is this

Suit No 248 of 1980 was filed by G K. Awasthi and his mother impleading therein Smt Vimla Kapoor and others praying for an injunction restraining them from interfering with their possession on the trees and the land forming part of the premises of bungalow No 23 Hamilton Road. Their case was that they were tenants and the defendants were trying to forcibly evict them The suit was decided by the XII Addl. Munsif Magistrate Allahabad on February 24 1983 In this suit some of the findings recorded were that the land, with the trees thereon was not in the tenancy of late Sri Babu Ram Awasthi nor in his possession that the status of the plaintiffs was only that of trespassers that the tenant Sri Babu Ram Awasthi had gone away to Bangalore in the year 1972 and permanently shifted away from Allahabad and before going to Bangalore he had vacated the house in dispute Also that it was not established that the defendants ever threatened to forcibly evict the plaintiffs No cause of action therefore arose for the suit The suit was dismissed The judgment of the learned Munsif has been according to the counsel for Awasthis challenged in Civil Appeal No 197 of 1983 and is pending consideration by the Addl Distt Judge Allahabad

8 A number of submissions were made on behalf of the petitioners by their counsel Of these the one which was made with great emphasis was that no opportunity was given to Smt Bhagwati Awasthi by the Rent Control and Eviction Officer before declaring the vacancy and making an order of release in favour of the landlady Smt Bhagwati Awasthi, according to the submission was brought on record as one of the heirs of late Sri Babu Ram Awasthi by the landlady through her application for substitution made in case No 17 of 1977 The application is Annexure CA 1 to the affidavit of Mohd Yakub Parokar of the landlady sworn in reply to the supplementary counter affidavit of Gopal Krishna Awasthi on December 2 1982 in the first writ petition Annexure CA 2 is a copy of the affidavit sworn by the landlady in support of that application In paragraph 2 of this affidavit, the landlady says that the fact that Sri Babu Ram Awasthi had died on May 3 1979 came to her

knowledge for the first time on July 1979 In the following paragraph, she stated that Sri Babu Ram Awasthi left behind him his widow four sons and five daughters Then in paragraph 4 she said that Mrs. Babu Ram Awasthi and her 4 sons as mentioned above are the only heirs and legal representatives to inherit the tenancy right of the deceased, Babu Ram Awasthi in premises No 23 Hamilton Road, Allahabad Mohd. Yakub has stated in paragraph 4 of the affidavit, to which are appended Annexures CA 1 and CA 2 that the averments made in the affidavit filed in support of the substitution application were on the ground of legal advice given to him by the landlady s counsel. About the letter sent by the son of the landlady on August, 16 1979 (Annexure 3 to the first writ petition) in which he confirmed that the amount of Rs 612/ sent through the bank draft, cleared the rent account up to July 31 1979 and that future remittances he made payable at State Bank of India Madhavnagar Branch, Ujjain it has been said in paragraph 14 of the counter affidavit sworn by the landlady s son on her behalf that these allegations were not relevant for the purpose of the first writ petition In his counter affidavit, sworn on behalf the landlady in the second writ petition her son explained this letter by stating in paragraph 21 that when rent was acknowledged by the landlady s son in his letter dated August 16 1979 the fact that Sri Babu Ram Awasthi had died on May 3 1979 was not in the knowledge of the landlady She came to know about the death of Sri Babu Ram Awasthi much later No advantage can be taken by the widow of Sri Babu Ram Awasthi from this letter

9 The fact that the landlady knew about the death of Sri Babu Ram Awasthi on July 6 1979 and that she herself brought the widow of Sri Babu Ram Awasthi on the record of the case as an heir and further that her son acknowledged on her behalf receipt of rent for the premises in dispute for the period ending July 31 1979 stand clear The proceedings in case No 17 of 1977 were pending till January 21 1981 when they were got dismissed as not pressed Case No 491 of 1979 was instituted by Smt Vimla Kapoor through an application made under section 16 on August 27 1979 Vacancy was declared through the order of January 2 1981 by the Rent Control and Eviction Officer and a copy of that order is annexure 12 to the first writ petition Smt Bhagwati Awasthi as one of the heirs of late Sri Babu Ram Awasthi was certainly entitled to notice before any order declaring vacancy was passed

10 Counsel for the landlady has argued that Smt Awasthi had opportunity before the order declaring vacancy was passed He says that she had notice through her son Gopal Krishna Awasthi who was contesting the case on behalf of all the heirs of Sri Babu Ram Awasthi as stated by him in his affidavit dated September 17 1979 filed in case No 17 of 1977 in reply to the substitution application made in that case That affidavit has been brought on the record of the first writ petition along with the affidavit of Mohd Yakub filed on behalf of the landlady in this Court Gopal Krishna Awasthi opposed the prayer for substitution In paragraph 1 of this affidavit he says that he was one of the sons of Sri Babu Ram Awasthi and was doing pairvi on behalf of other proposed heirs The counsel also says that one of the sons of Smt Bhagwati Awasthi namely Dr B K Awasthi wrote a letter dated August 2 1979 to the Rent Control and Eviction Officer Allahabad in reply to the letter No 133 July 23 1979 sent by the Rent Control and Eviction Officer Allahabad to him and asking for his presence in his office on August 8 1979 In it Dr Awasthi intimated the Rent Control and Eviction Officer that his brother Sq Leader G K Awasthi had been living there (23 Hamilton Road) and that he had asked him to contact the Rent Control and Eviction Officer This letter is Annexure CA 3 to the aforesaid affidavit of Mohd Yakub A copy of the letter of the Rent Control and Eviction Officer of July 23 1979 has been filed as Annexure 4 to the rejoinder affidavit sworn by Gopal Krishna Awasthi on May 17 1982 in the first writ petition This notice is addressed to Sri B R Awasthi and not to Smt Bhagwati Awasthi

11 It was urged on behalf of the landlady that in the order of the Rent Control and Eviction Officer dated July 14 1982 on the application of Smt. Bhagwati Awasthi dated April 22 1981 under S 16(5) (numbered as case No 188 of 1981) and of the Addl District Judge dated April 16 1985 passed in the revision against the order of the Rent Control and Eviction Officer it has been found that

Smt. Bhagwati Awasthi had knowledge of the case The inspection report of October 3 1979 by the Rent Control Inspector also says that the inspection has been made in the presence of Gopal Krishna Awasthi and a woman whom he was addressing as mother All this shows that Smt Bhagwati Awasthi was aware of the proceedings. Also that the defence put forward by Gopal Krishna Awasthi was all that could be put forward by his mother Smt. Bhagwati Awasthi Even if notice was not issued in the name of Smt Bhagwati Awasthi it could not be said that any prejudice has been caused to her on that account This court according to the submission should not interfere in the matter on the ground that proper opportunity was not given to Smt Bhagwati Awasthi Reliance was placed upon a decision of R B Lal, J in Suresh Chandra v 4th Addl District Judge Aligarh 1984 (UP) RCC 357 There petitioner Suresh Chandra who was living with his family in the United States of America had challenged the allotment of a shop situate in Aligarh belonging to him to one Raj Kumar Mittal after the previous tenant Bhagwan Das died, without notice to him It was found as a fact that the brother of the petitioner Suresh Chandra namely Mahesh Chandra was looking after the shop as holder of power of attorney Bhagwan Das the previous tenant had vacated the shop and handed over possession to Mahesh Chandra who did not give intimation of the vacancy of the shop to the Rent Control and Eviction Officer as required by S 15(1) of the Act The shop was then in possession of the petitioner through his attorney Mahesh Chandra attorney was present when the Inspector inspected the shop He had full knowledge of the allotment proceedings notwithstanding the fact that the notice of the proceedings was not served upon him This Court declined to intervene in the matter as having regard to the facts and circumstances noticed in the judgment it felt that there has been no failure of justice in the case The learned Judge who decided the case felt that it was not a fit case for exercise of discretion in favour of the petitioner

12 It is also canvassed by the learned counsel for the landlady that in any case Smt Bhagwati Awasthi did file an application under S 16(5) (registered as case No 188 of 1981) in which she put forward her own case Her case was considered yet the relief sought was refused As such also Smt Bhagwati Awasthi cannot complain that she suffered on account of non issuance of notice to her

13 In Ganpat Roy v Addl District Magistrate AIR 1985 SC 1635 (1985 All LJ 900) the Supreme Court while examining the question whether a petition under Art 226 of the Constitution filed against an order notifying deemed vacancy was premature as held earlier by the Supreme Court in Tirlok Singh & Co v District Magistrate Lucknow AIR 1976 SC 1988 made some observations which are useful. The Supreme Court, after noticing the scheme of U P Act XIII of 1972 and the Rules framed thereunder said (in para 10 of the report) that

From the very nature of things a right to defend an application in the first instance is a very different matter from a right to seek a review of the order on that application or a right of appeal against that order In its very nature and scope an original hearing differs substantially from a review or an appeal. A party applying for review or an appellant cannot as of right lead evidence Further it is he who comes before the authority challenging an order passed to his prejudice and is not in the same position as the party against whom an order is sought in the first instance

These observations clearly imply that before notifying a deemed vacancy opportunity should be given to those who are likely to be adversely affected by the order Smt Bhagwati Awasthi was unquestionably such a person She was undoubtedly a member of the family of Sri Babu Ram Awasthi being his spouse She was brought on the record as a legal representative of Sri Babu Ram Awasthi during the pendency of the proceedings Admittedly no notice was issued to her The question whether she was a tenant after the death of her husband within the meaning of section 3(a) of the Act on account of being an heir normally residing with Sri Babu Ram Awasthi in the building at the time of his death could only be determined after notice to her and not otherwise

14 If as I hold it was imperative to serve a notice upon Smt Bhagwati Awasthi before the question of deemed vacancy could be decided after the death of Sri Babu Ram Awasthi, the mere fact that she had knowledge

of the proceedings or that failure to serve a notice upon her did not visit her with any prejudice would hardly matter Giving of a notice to a tenant, in the case of a deemed vacancy under S 12(4) has been made imperative by the proviso to S 16(1) A notice under that proviso must be given as ruled by the Supreme Court in Yogendra Tewari v District Judge Gorakhpur AIR 1984 SC 1149 (1984 All LJ 498)

15 The requirement that notice should be given to a person who is likely to be affected by the order cannot be dispensed with by relying upon the principle of absence of prejudice or imputation of certain knowledge to the party against whom action is sought for The Supreme Court has laid it down in C A Taluk Arrack Sales Co-operative Society Ltd v Secretary (Food and Agriculture) Govt of Andhra Pradesh AIR 1977 SC 2313

15A. Service of notice upon Smt. Bhagwati Awasthi was also necessary because the landlady s son himself wrote to one of the sons of late Sri Babu Ram Awasthi on August 16 1979 that the amount sent by that son of Sri Babu Ram Awasthi, on behalf of his mother through the Bank draft cleared the rent account up to July 31 1979 May be as said by him in the counter affidavit filed on behalf of of the mother the landlady this assertion was made in ignorance of the fact that Sri Babu Ram Awasthi had died, yet without anything more the assertion undoubtedly entitled Smt Bhagwati Awasthi to a notice from the Rent Control and Eviction Officer before declaring vacancy The letter was subsequently filed by Smt Bhagwati Awasthi in Rent Revision No 522 of 1982 on March 10 1983 along with an affidavit as annexure 1 and was numbered as paper No 16-G This fact is clear from the supplementary affidavit of Gopal Krishna Awasthi sworn on September 24 1985 and filed in the first writ petition after inspecting the file of Rent Case No 491 of 1979 as desired by this Court In paragraph 4 of the said supplementary affidavit, another circumstance brought to the notice of this Court was that in case No 491 of 1979 the landlady filed an affidavit on September 26 1979 in which the receipt of rent through the Bank draft was acknowledged in para 14 while stating in para 15 that it was accepted by her having no knowledge of the death of Sri Babu Ram Awasthi There is a reference in para 14 to the letter dated August 4 1979 of Dr B K Awasthi, son of Sri Babu Ram Awasthi in reply to which the letter dated August 16 1979 was sent by the son of the landlady Though filing of the affidavit on September 26 1979 has been disputed in the supplementary counter affidavit by Mohd Yakub on behalf of the landlady in reply to the aforesaid supplementary affidavit of Sri G K Awasthi what has been said is that the extract of paragraphs 14 and 15 given in paragraph under reply were of an affidavit sworn and filed on or about December 8 1979 Be that as it may the fact that Smt Bhagwati Awasthi claiming to be a tenant of the premises in dispute had been brought on record long before the declaration of the vacancy by an order of January 2 1981 Whether her claim was correct or not and whether rent had been accepted in ignorance of the fact of death of Sri Babu Ram Awasthi could only be decided in this situation after notice to Smt Bhagwati Awasthi and so also the question whether the accommodation could be deemed to be vacant

16 If on no other ground Smt Bhagwati Awasthi would be entitled in the circumstances of the present case to notice from the Rent Control and Eviction Officer before an order notifying a deemed vacancy could be passed, on the ground of natural justice She is a widow who claims that the rent remitted on her behalf after the death of her husband for the period ending July 31 1979 had been accepted on behalf of the landlady On this claim she certainly deserved a notice before an order adversely affecting her right could be made Merely because she would have no explanation other than what had been offered by her own son even if opportunity was afforded to her by serving a notice or that she was held to be a trespasser later by a judgment dated April 24 1983 (which judgment is under appeal) by the 12th Addl Munsif Magistrate Allahabad would not justify non issuance of notice to her This is what follows from the decision of the Supreme Court in Olga Tellis v Bombay Municipal Corporation (1985) 3 SCC 545 (AIR 1986 SC 180)

17 The failure to give notice to Smt Bhagwati Awasthi before vacancy was directed to be notified was a clear violation of the

statutory requirement of R 8 It has the result of depriving her of an opportunity of hearing which rule 8 conferred upon her The proviso to S 16(1) makes it clear that in the case of a deemed vacancy the District Magistrate is required to give an opportunity to the landlord or tenant as the case may be of showing that no declaration of deemed vacancy under S 12(4) could at all be made in his case as the vacancy actual, expected or deemed is a jurisdictional fact for the making of an order of allotment under S 16(1)(a) or for an order of release under cl. (b) thereof the District Magistrate must follow the procedure prescribed under the Act and the Rules framed thereunder Even in the absence of these provisions viz proviso to section 16(1) and Rules 8(2) and 9(3) of the Rules framed under section 41 of the Act the principle of audi alteram partem would clearly be applicable The District Magistrate in making an order of allotment under cl (a) or an order of release under cl (b) of S 16(1) clearly exercises a quasi judicial function and therefore he has the duty to hear There must be an impartial objective assessment of all the pros and cons of the case after due hearing of the parties concerned. See Yogendra Tewari v District Judge Gorakhpur AIR 1984 SC 1149 (1984 All LJ 498)

18 The order of the Rent Control and Eviction Officer of January 2 1981 is unsustainable not only on the ground that the procedure followed by the Rent Control and Eviction Officer was violative of the provisions of the Act and the Rules but also on the ground that it was violative of the principles of natural justice It cannot be sustained nor can the order passed by him on March 11 1981 releasing the premises in favour of the landlady under section 16 following the declaration of vacancy The jurisdictional fact of vacancy having been determined without notice to Smt Bhagwati Awasthi the fact of its affirmance by the District Judge in Revision by his order of November 7 1981 will not validate it. The order of the District Judge will also fall with it

19 The two orders which have been assailed in the second writ petition filed by Smt Bhagwati Awasthi, namely the one dated July 14 1002 (1982?) rejecting her application for review made under section 16(5) and the second passed by the Addl. District Judge on April 16 1985 in the Revision against it, can also not be sustained The first of these orders is not only cryptic but also proceeds upon assumption of facts which were found without notice to Smt Bhagwati Awasthi. For example the fact that Smt Awasthi was not residing with late Sri Babu Ram Awasthi at the time of his death has been assumed without disclosure of the basis for such assumption The judgment of the District Judge dated November 7 1981 dismissing the Revision filed by G K Awasthi against the order of the Rent Control and Eviction Officer of March 11 1981 releasing the premises in favour of the landlady has been relied upon That order which affirmed the order of release consequent upon declaration of vacancy without notice to Smt Bhagwati Awasthi, itself being untenable in law cannot justify any inference based upon it The revisional order of the Addl. District Judge dated April 16 1985 which upholds the order of the Rent Control and Eviction Officer refusing to review the earlier order at the instance of Smt. Bhagwati Awasthi suffers from the same error in holding that the order of the District Judge was rightly relied upon by the Rent Control and Eviction Officer The revisional order also says that no error of jurisdiction had been committed by the Rent Control and Eviction Officer It further says that the sons of Smt Bhagwati Awasthi had full knowledge of the proceedings from the very beginning and one of them, namely G K Awasthi even contested the proceedings The application according to the revisional order was to be elected having been moved after her son had lost the litigation before the Rent Control and Eviction Officer and the revision filed by him before the District Judge was pending This was also a reason for refusing relief If, as held by me earlier it was imperative that a notice be given to Smt. Bhagwati Awasthi before deciding the question of vacancy the so-called delay by her in making the review application would be of no consequence particularly when there is no dispute that no notice was issued to her by the Rent Control and Eviction Officer before declaring the premises to be vacant. The revisional order must also therefore fall.

20 In the view that I have taken it is not necessary to go into the other submissions made on behalf of the petitioners in the two writ petitions which were to the effect that the temporary absence or keeping the premises locked temporarily did not amount to a tenant ceasing to occupy the premises or that there was no proof that Sri Babu Ram Awasthi and, after his death, his heirs substantially removed their effects from the premises or further that the authorities had failed to consider material evidence on the record which vitiated their orders It is also not necessary to go into the question whether the landlady was precluded from disputing the claim of the widow of late Sri Babu Ram Awasthi that she had been acknowledged as tenant by acceptance of rent tendered to her on behalf of Smt Bhagwati Awasthi and having brought them on record as an heir of Sri Babu Ram Awasthi after his death These questions together with the question of the effect of late Sri Babu Ram Awasthi having inducted Ganga Prasad Yadav in the premises without the consent of the landlady or the correctness of the allegation made on behalf of the landlady that no heir of Sri Babu Ram Awasthi was normally residing with him at the time of his death in the premises in dispute shall be gone into by the authorities under the Act afresh in accordance with law They shall do so expeditiously after notice to Smt Bhagwati Awasthi

21 In conclusion, both the writ petitions succeed and are allowed. The orders impugned therein namely the orders dated January 2 1981 March 11 1981 and November 7 1981 (Annexures 12 13 and 15 in Writ Petition No 14229 of 1981) and dated July 14 1982 and April 16 1985 (Annexures 10 and 11 in Writ Petition No 9765 of 1985) are quashed. parties are however left to bear their own costs in both the petitions

Petitions dismissed

1986 ALL L J 542

(LUCKNOW BENCH)

S C MATHUR AND KAMLESHWAR NATH JJ

Gur Bux Singh Bakshi Petitioner v State of Uttar Pradesh and another Respondents.

Writ Petn No 2292 of 1985 D/ 13-8 1985

(A) National Security Act (65 of 1980), S 3(2) — Detention — Grounds — Threat to witnesses not to give evidence against detenu — Threat simple and not accompanied by force or overt act — It cannot be ground of detention

Where a threat to eye-witnesses not to give evidence against the detenu is not accompanied with any overt act, it cannot constitute basis for an order of preventive detention under S 3(2) of the Act Such a threat cannot be said to be related to maintenance of public order W P No 11151 of 1984 D/ 1 8 1985 (All) (FB) and 1985 All LJ 1222 (FB) Applied (Para 6)

(B) National Security Act (65 of 1980), S 3(2) — Detention — Subjective satisfaction — Satisfaction on basis that charge-sheet has been filed against detenu and case pending before Court — Fact not existing — Detention is illegal

The filing of charge sheet in court and pendency of case in court is not sine qua non for passing an order of preventive detention under the Act. The District Magistrate could acquire satisfaction referred to in S 3(2) even though no charge-sheet had been submitted in court But where subjective satisfaction is acquired on the basis that charge-sheet has been filed in Court and the case is pending there and this fact is not existent, the detention is illegal In such a case the District Magistrate cannot through his return filed to the detenu s challenge convert a non existent fact into an existing fact Case law discussed (Paras 11 14)

(C) National Security Act (65 of 1980), S 3(2) — Detention — Grounds — Subjective satisfaction of detaining authority — Justiciability — Court not entering into question of sufficiency of grounds of detention

— Court could lift veil for limited purpose of finding whether subjective satisfaction was acquired on existent or non-existent ground. (Para 15)

Cases Referred Chronological	Paras
1985 All LJ 1222 (FB)	6
1985 Cri LJ 266 (All)	10
(1985) Habeas Corpus Writ Petn No 11151 of 1984 D/ 1 8-1985 (All) (FB) Ashok Dixit v State of U P	6 7
1984 Cri LJ 999 (All)	10
1984 Lucknow LJ 128 1985 UP Cri R 228	10
AIR 1983 SC 1130 1983 SCC (Cri) 840 1983 Cri LJ 1649	13
1983 Cri LJ 548 (All)	7
(1982) Writ Petn No 856 of 1982 D/ 28 5 1982 (All) Subhash Misra v State of U P	9
AIR 1975 SC 168 1975 Cri LJ 259	14
AIR 1975 SC 229 1975 Cri LJ 275	12
AIR 1975 SC 919 1975 Cri LJ 784	11
AIR 1974 SC 832 1974 Cri LJ 702	15

Virendra Bhatia P K Punvani Ashok Nigam and A N Varma, for Petitioner Govt Advocate for Respondents

S C MATHUR, J — Gur Bux Singh Bakshi alias Bakshi Baba has directed this writ petition against the order of preventive detention passed against him by the District Magistrate Lucknow under the provisions of the National Security Act 1980 (Act No 65 of 1980) for short Act The facts necessary for the disposal of the petition fall within a narrow campus (compass?) and may be immediately stated

2 The order of detention was passed on 25 1 1985 a copy of this order is annexure 1 The petitioner was arrested on 26-4-1985 and the grounds of detention were served upon him on 27 4-1985 a copy of the grounds of detention is annexure 2 Only two grounds have been mentioned on the basis of which the District Magistrate claims to have acquired his subjective satisfaction to the effect that the detention of the petitioner was necessary in order to prevent him from acting in a manner prejudicial to the maintenance of public order

3 In the first ground it is mentioned that an occurrence took place on 17 11 1984 at 12 noon in which one Sunder lost his life It is stated that first information report with regard to this occurrence was lodged at police station Krishna Nagar Lucknow under S 302 Penal Code on the basis of which crime case No 381 was registered It is further stated in this very ground that in respect of this occurrence after investigation, charge-sheet was submitted in Court where the case was pending trial. The petitioner is nominated in the report.

4 In the second ground it is alleged that the beat constable made a report which was entered in the general diary dated 29-11 1984 at No 45 in which it was stated that on that day the petitioner and his brother Guru Saran Singh alias Shan threatened Sri Sanjay who was a witness in the occurrence referred to in ground No 1 against giving evidence in the said case This general diary entry is alleged to have been made at 21 30 hours It is further stated in this ground that investigation of this matter was done by the Sub-Inspector of Police Sri Abhai Singh and the allegation was found to be correct

5 The petitioner has asserted that the second ground of detention is not related to maintenance of public order and therefore an order of detention could not be passed under S 3(2) of the Act. In respect of the first ground he has alleged that no case had been filed in Court and it has been wrongly stated in the grounds of detention that charge-sheet had been submitted and case was pending in Court According to the petitioner the detention order so far as first ground is concerned is based on non existent fact We shall first take up the challenge relating to the second ground

6 In the second ground there is no averment regarding the effect of the threat upon the witness Sanjay It is also not stated that on account of the threat allegedly extended by the petitioner and his associate Sri Sanjay or other witnesses had been so much terrorised that they were unwilling to give evidence in the case referred to in the first ground On such facts it has been held in two Full Bench decisions of this Court that the threat cannot be said to be related to maintenance of public order and such a threat cannot form the basis of an order of preventive detention under S 3(2) of the Act, In Habeas Corpus Writ Petition No 11151 of 1984 Ashok Dixit v State of U P decided on 1 8-1985 the Full Bench observed thus —

It would be unreasonable to hold that every

attempt or persuasion or simple threat to witness not to give evidence would affect public peace or tranquility Only that kind of threat to witnesses which is likely to creat panic or terror in the minds of the eye-witnesses that if they gave evidence against the detenu there would be reprisal A simple threat cannot reasonably have any such effect to disturb even tempo of the life of community But, if the threat is accompanied by show of force or by any overt act if given publicly it may create terror in the locality and the witnesses may feel insecure on account of possible reprisal such threat may have nexus to public order

In Habeas Corpus Writ Petn. No 12438 of 1984 Shesh Dhar v State of U P decided on 1 8 1985 (reported in 1985 All LJ 1222 at P 1230) the majority judgment states thus —

" The giving of threat to individual witnesses unaccompanied by any overt act could not have such an impact as to disturb the even tempo of the life of the community

In the present case also the alleged threat is not accompanied with any overt act. In view of the law laid down by the Full Bench the threat relied upon in the present case cannot constitute basis for an order of preventive detention under S 3(2) of the Act. Accordingly the detention order cannot be sustained on the basis of the second ground

7 The learned counsel for the State relied upon Mohammad Salim v Adhikshak Janpad Karagar Paun, 1983 Cri LJ 548 This judgment on this point, has been expressly overruled by the Full Bench in Ashok Dixit s case (supra)

8 Regarding the first ground there is now no dispute between the parties that no charge-sheet had been filed in Court in respect of the occurrence referred to in the said ground and that no case in respect of the said occurrence had become pending in a Court of law However the District Magistrate has tried to explain the circumstances in which the filing of charge-sheet and pendency of case in Court came to be mentioned in the first ground In his supplementary counter affidavit dated 8 8-1985 he has stated that the occurrence referred to in ground No 1 had taken place on 17 11 1984 and first information report in respect of the occurrence was lodged the same day at police station Krishna Nagar It is then stated that investigation was conducted by the local police from 17 11 1984 to 1 12 1984 and from 2 12 1984 to 4-1 1985 and then on 4-1 1985 the police of Police Station Krishna Nagar submitted charge-sheet In para 6 it is stated that during the investigation of the case by the local police the Inspector General of Police directed the Crime Branch to make a check on the investigation done by the local police On the basis of this direction of the Inspector General of Police the Crime Branch obtained from the local police the case diary on 29-11 1984 It is further stated that despite the fact that the case diary and papers of the investigation done till that time had been taken away by the Crime Branch the local police continued with the investigation and completed the same on 4-1 1985 and on this very date they submitted charge-sheet. As a proposition of law it has been stated in para 7 that the investigation by local police does not get stopped on account of the check investigation done by the Crime Branch. In para 8 it is stated that although the local police submitted charge-sheet on 4-1 1985 it could not be sent to Court because of the absence of the papers of the investigation which had been taken in their custody by the Crime Branch on 29-11 1984 In the charge-sheet, which is alleged to have been submitted by the local police on 4-1 1985 the petitioner has been shown as an absconder In the last para of the affidavit viz para 11 it has been stated that the Criminal Investigation Department has still not completed the investigation which is still pending

9 In para 8 of his first counter affidavit viz the affidavit dated 11 7 1985 the District Magistrate has asserted that the local police had, in its report given to him stated that charge-sheet had been submitted and from this it has been inferred that charge-sheet had gone to Court and, therefore in the order of detention it has been mentioned that charge-sheet had been submitted and matter was pending in Court Thereafter he has stated that normally while passing order of detention under the Act he insists upon completion of the investigation and submission of charge-sheet before he passes an order of detention but in the present case he would have passed the order of detention even though the charge-sheet had not been submitted to Court. It would be worth while to reproduce his defence in his own language It reads thus —

"Normally deponent while passing N S A. orders insists that investigations be completed

and charge sheet submitted before the contents of a particular crime are used against any proposed detenu although it is not necessary This is only for deponent s own subjective satisfaction regarding sufficience of grounds against a proposed detenu In this case also the same procedure was followed and after police investigations were over the deponent was satisfied about detaining the petitioner on the basis of this ground and another ground Deponent was not aware of any intervention by C I.D in the investigation and deponent after being satisfied with the material placed before him passed the orders Even if the charge sheet could not reach the Court due to above mentioned circumstances there could not have been any difference to the satisfaction of the deponent as on the basis of completed investigations of the local police deponent was satisfied that the petitioner be detained The submission of charge-sheet to the Court was only a fact presumed by the deponent on the basis of written report before him but is not reaching the Court would not have altered deponent s satisfaction regarding the detention

Now let us scrutinise the explanation of the District Magistrate He himself admits that normally he passes an order of preventive detention only after investigation has been completed and charge-sheet has been submitted in Court After making this statement he does not indicate any reason for departure from this normal procedure After stating his normal practice, he makes a bald statement that he would have passed the same order even if the charge-sheet had not reached the Court In the absence of any explanation regarding departure from normal practice we are unable to accept the District Magistrate s assertion that he would have passed the same order even with the knowledge that charge-sheet had not been submitted in the Court From the admission made by the District Magistrate it is apparent that a non existent fact was taken into consideration while passing the order of detention on the first ground the said non existent fact being the submission of the charge-sheet to Court and pendency of case in Court. On similar facts a Division Bench of this Court in Writ Petn. No 856 of 1982 Subhash Misra v State of U P decided on 28-5-1982, quashed the order of preventive detention In this case it was stated in one of the grounds that the detenu was involved in a crime said to have been committed on 11 12-1980 and the charge-sheet was sent to Court with respect to that case where it was pending consideration The Bench summoned the record of that case and found that the charge-sheet had been submitted only on 22 9-1981 while the order of preventive detention had been passed much earlier on 3-7 1981 The Bench accordingly came to the conclusion that the detention order was based on non existent ground and could not therefore be sustained This judgment has full application to the facts of the present case We respectfully subscribe to the view taken in this case

10 In Banshi v State of U P 1984 Lucknow LJ 128 the detention order had been passed with the allegation that a case under S 324 Penal Code was investigated and charge-sheet was filed in Court against the petitioner and the said case was pending The fact as subsequently revealed, was that prior to the date on which the detention order was passed, the case had concluded and the detenu had been acquitted of the charge A Division Bench of this Court quashed the detention order on the ground that the same was based on non existent fact While quashing the order the Division Bench observed —

The fact of acquittal of the petitioner was a material fact which was not taken into consideration by the detaining authority who was under the wrong impression that the case against the petitioner was still pending The order of detention being based on subjective satisfaction of the District Magistrate we are not in a position to speculate as to whether he would have passed the detention order or not if the correct position had been taken into account by him As such, the detention order cannot be sustained "

To the same effect are the decisions of this Court in re

1 Asfaq v State of U P 1984 Cri LJ 999 and 2 Mohammad Ismail v State of U P 1985 Cri LJ 266

11 The learned counsel for the State tried to distinguish the above decisions by submitting that in the present case the District Magistrate has filed his own affidavit asserting therein that he would have passed the order of detention even if it had been brought to his notice that

the charge-sheet had not been filed in Court and the case is not pending in a Court of law According to the learned counsel such an explanation can be given in the counter affidavit filed in opposition to the writ petition For this submission he has relied upon the observations contained in paras 12 and 14 of the judgment of their Lordships of the Supreme Court as reported in Sadhu v State of West Bengal AIR 1975 SC 919 (1975) 1 SCC 660 We are unable to agree with the submission of the learned counsel that any such proposition has been laid down by their Lordships in this case In this case it was not clear as to how subjective satisfaction had been obtained by the District Magistrate on the basis of the material on record. The District Magistrate did not file his own affidavit and instead counter affidavit was filed by the Deputy Secretary in the Home Department The Deputy Secretary in the Home Department explained the absence of District Magistrate's counter affidavit by saying that he had been transferred to another State namely State of Sikkim Thereafter he tried to explain as to how subjective satisfaction had been acquired by the District Magistrate In respect of this their Lordships of the Supreme Court observed that subjective satisfaction of the District Magistrate could be explained only by the District Magistrate who acquired the satisfaction and that the said satisfaction could not be explained by the Deputy Secretary in the Home Department. This judgment is not authority for the proposition that the District Magistrate can through his return filed to the petitioner's challenge convert a non existent fact into an existent fact Through the counter affidavit filed in the present case the District Magistrate has tried to convert a non existent fact into an existent fact which in our opinion he was not entitled to do

12. Jamal Sk v District Magistrate West Dinajpur AIR 1975 SC 229 was also relied for the proposition that explanation could be given in the counter affidavit In this case the petitioner's name did not figure in the first information report It appears that on behalf of the petitioner it was submitted that if his name did not figure in the first information report there was no material for ordering his preventive detention. Through the counter affidavit filed on behalf of the State it was pointed out that although the petitioner's name was not mentioned in the first information report, his complicity in the incident transpired in the course of investigation It is, therefore not a case where a non existent fact had been considered by the detaining authority while passing the detention order which he tried to convert into an existent fact This authority is, therefore of no assistance to the learned counsel This is a case where on existing facts the petitioner's challenge was sought to be controverted and the detention order was sought to be explained.

13 Another authority relied upon for the same proposition is Jadunandan Sah v District Magistrate Dhanbad 1983 SCC (Cri) 840 (AIR 1983 SC 1130) In this case it was urged on behalf of the petitioner that in the first information report no allegation of disturbance of public order had been made and therefore the detaining authority was not entitled to invent ground regarding apprehension from the petitioner about the disturbance of public order in the counter affidavit It was stated on behalf of the detaining authority that apart from the first information report there was the supervision note of the Deputy Superintendent of Police Dhanbad and on the basis of this note and other material on record the detaining authority was satisfied that there was apprehension of breach of public order from the petitioner This again is not a case where a non existent fact was sought to be converted into an existent fact The supervision note of the Deputy Superintendent of Police was already on the record of the detaining authority Through the counter-affidavit the detaining authority only explained the material which had been taken into consideration for forming the subjective satisfaction referred to in S 3(2)

14 The learned counsel for the State cited certain authorities in support of the proposition that filing of charge-sheet in Court and pendency of case in Court was not sine qua non for passing an order of preventive detention under the Act According to the learned counsel the District Magistrate could acquire satisfaction referred to in S 3(2) even though no charge sheet had been submitted in Court So far as the proposition of law is concerned we accept the same The position, however would be entirely different where subjective satisfaction is acquired on the basis that charge-sheet has been filed in Court and case is pending there

The authority cited by the learned counsel is Israil Sk v District Magistrate West Dinajpur AIR 1975 SC 168

15. Anil Dey v State of West Bengal, AIR 1974 SC 832 was relied upon for pressing that veil of subjective satisfaction of the detaining authority cannot be lifted by the Courts with a view to appreciate its objective sufficiency In the present case we are lifting the veil of subjective satisfaction for the purpose of making an objective assessment of the sufficiency We are lifting the veil for the limited purpose of finding whether the subjective satisfaction was acquired on existent ground or non existent ground. We are not at all entering into the question of sufficiency of the grounds of detention This authority therefore is of no assistance to the learned counsel

16. The learned counsel for the petitioner has also submitted that the facts stated in ground No 1 could not be related to public order and, therefore also the first ground could not be relied upon for passing the impugned order In view of the fact that we are of the opinion that the impugned order of detention cannot be sustained on the grounds already discussed it is not necessary to consider this submission of the learned counsel

17 In view of the above the petition is allowed and the order of preventive detention dated 25-1 1985 annexure 1 is hereby quashed The petitioner shall be released forthwith unless required in connection with any other case The cost of the petition shall be easy

Petition allowed

1986 ALL. L. J 547

S D AGARWALA J

Amar Nath Petitioner v IV Additional District and Sessions Judge Saharanpur and others. Respondents

Civil Misc Writ No 3537 of 1980 D/ 9 9-1985

U P Regulation of Money Lending Act (29 of 1976), S 26(1), Proviso (as added by U P Act 1 of 1979, S. 6) and S. 28 — U P Regulation of Money Lending Rules (1976), R 19 — Condonation of delay in filing Form 10 — Registrar signing office note recommending acceptance of Form 10 filed with some delay for registration and registering debt in his record — There is compliance of Proviso to S 26(1) — Registrar not giving any express reasons for condoning delay nor creditor filing written application for condonation of delay — Immaterial — Registration is valid

In the instant case money lender decree holder had submitted form 10 on certain date before coming into force of Act 1 of 1979 In this form the name of debtor alone had been shown and the particulars of debt had not been given In view of S 26 read with R 19 the form was incomplete Thereafter the petitioner submitted another form 10 and sent it to the Registrar But since Registrar had no power to extend period of limitation within which registration had to be made the application lay in the office of Registrar It was after coming into force of amendment Act 1 of 1979 the clerk concerned in the office of the Registrar recorded a note to the effect that form 10 submitted by petitioner earlier be accepted and ordered to form part of record This note was signed by Registrar

Held, the fact that note which stated the reasons for the delay having been signed by Registrar impliedly showed that the Registrar had condoned delay in filing form 10 By mere fact that specific reasons had not been given in the order it could not be said that the Registrar had not applied his mind The signing by Registrar of note of office where reason for delay was there and ultimate registering of said form 10 complied with provisions contained in Proviso to S 26(1) Further the debtor cannot take any benefit of any irregularity in process of registration once the registration had been accepted as valid

(Paras 17 19)

Rule 19 only provides for the Registrar signing form 10 and to keep the said record in his custody The legislative intent behind this is only this that a bona fide debt should be recorded and registered with the Registrar and nothing more Once the Registrar had accepted form 10 and registered the debt in his record the mere fact that, technically express reasons having not been given or a written application having not been made does

not take away the effect of the registration made under the provisions of the Act and the Rules framed thereunder (Para 18)

H S Nigam for Petitioner Ravi Kiran Jain for Respondents

ORDER — This is a petition under Art 226 of the Constitution

2. The facts leading to the present petition are as under —

Nazir respondent No 3 borrowed a sum of Rs 8 000/ from the petitioner Amar Nath on 1st July 1974 on an interest at the rate of 2% per month On that very day he executed a promissory note and a receipt in favour of the plaintiff petitioner Since the amount was not paid by Nazir the petitioner filed a suit No 30 of 1976 for recovery of Rs 12 492/ in the court of the Civil Judge Saharanpur on the basis of the promissory note and the receipt dated 1st July 1974 In the suit only two issues were framed, firstly as to whether Nazir borrowed Rs. 9 000/ on an interest at the rate of 2% per month and executed the disputed promissory note and the receipt as alleged, and, secondly to what relief is the plaintiff entitled

3. The trial court, after examining the evidence on the record, came to the conclusion that the promissory note and the receipt were executed by Nazir and that a sum of Rs 9 000/ had been advanced by the petitioner to the defendant Nazir on 1st July 1974 In view of this finding the suit was decreed by judgment dated 27th July 1977 This judgment has become final as no appeal has been filed against the said judgment

4. Thereafter the plaintiff petitioner filed an application for execution of the said decree In the execution proceedings the judgment debtor filed objections under S 47 C P C The main objection was that no decree can be passed against the judgment debtor in the absence of the registration as a money lender It was further pointed out that the loan in question had not been shown in Form 10 which was filed before the Registrar of Money Lending at Saharanpur and, as such the decree passed in the suit was without jurisdiction and a nullity These objections were considered by the Civil Judge Saharanpur By an order dated 4th January 1979 the objections were allowed, the execution was dismissed and it was held that the decree holder was not entitled to recover the amount through execution and the property attached was consequently released. Aggrieved by this decision dated 4th January 1979 a revision was filed before the District Judge Saharanpur The revision came up for hearing before the 4th Additional District Judge Saharanpur By an order dated 14th January 1980 the revision was also dismissed The petitioner has now challenged the orders dated 4th January 1979 and 14th January 1980 by means of the present petition in this Court

5 I have heard the learned counsel for the parties at length who have very ably argued this petition

6 Learned counsel for the petitioner has urged that once Form 10 prescribed under the U P Regulation of Money Lending Rules 1976 (hereinafter referred to as the Rules) had been accepted by the Registrar in which the advance given to Nazir had been specified the court below acted without jurisdiction in holding that the decree was a nullity and that it could not be executed

7 The second contention of the learned counsel is that in view of the amendment made in S 26 of U P Act No I of 1979 the acceptance by the Registrar of his application for registration was valid and the mere fact that no reasons have been given by the Registrar for condonation of delay in filing the application for registration with some delay could not be sufficient to hold the registration to be invalid

8 The third contention raised by the learned counsel further is that in any case even if the order registering the application made by the petitioner money lender was invalid for any reason the same having not been challenged became final and the decree which had been passed in his favour could not be declared a nullity unless the registration had been set aside by a competent court of law

9 Learned counsel for the respondent on the other hand has very vehemently contended that the proviso which has been added to U P Act No I of 1979 in S 26 of the Act categorically laid down that there has to

be an application by the money lender for condonation of delay the Registrar has to consider the circumstance for condonation of delay and he has to specifically record a finding that sufficient cause has been made out for condonation of delay and in the absence of an application and the recording of the satisfaction by the Registrar the registration cannot be treated to be a valid registration in the eye of law entitling the decree holder to execute the decree which otherwise would be a nullity in the eye of law

10. It is necessary to state the relevant facts which are relevant for considering the contentions raised by the learned counsel for the parties

11 The U P Money Lending Act, 1976 (hereinafter referred to as the Act) came into force on 1st September 1976 by virtue of a notification issued by the State Government in exercise of its powers under S 1(3) of the Act Section 26 of the Act provides that every money lender carrying on the business of money lending from before the commencement of this Act shall submit to the Registrar a statement in the prescribed form within a period of three months from the date of such commencement Sub-section (2) of S 26 of the Act further provides that the statement referred to in sub-section (1) shall contain the particulars of debts due to each money lender and of deposits made with him and such other particulars as may be prescribed Sub-section (4) of S 26 provides the effect of not complying with the provisions of sub-section (1) of S 26 It lays down that no money lender shall be entitled to claim any amount from a debtor in respect of any loan advanced before the commencement of this Act, unless the name of such debtor and the amount due from him has been specified in the statement referred to in sub-section (1)

12. From a reading of S 26 of the Act it is clear therefore that the debt has to be registered with the Registrar If it is not so registered then the creditor cannot claim the amount from the debtor even though there may be a decree against the debtor

13. In exercise of the powers under S 23 of the Act the Governor has framed Rules. Rule 19 lays down the manner in which the statement referred to in S 26(1) of the Act has to be submitted. Form 10 has been prescribed for the said purpose Sub-clauses (2) and (3) of R 19 provide that the statement shall be submitted in duplicate and shall contain the particulars of all the debts and deposits of a money lender The said statements shall then be consecutively numbered in the office of the Registrar Sub-clause (4) is relevant which empowers the Registrar to put his dated signture on every page of the statement and shall also put his official seal thereon The other sub-clauses relate to keeping the said register in custody of the Registrar so as to avoid fabrication at any subsequent stage Rule 19 therefore clearly provides that in order to have a valid registration Form 10 submitted by the creditor has only to be signed by the Registrar and then kept in his custody

14 It appears that after the promulgation of the Act, certain creditors could not register their claims within the period of three months, as provided by S 26 of the Act The Legislature consequently added a proviso to S 26(1) of the Act by U P Act No I of 1979 which reads as under

Provided that the Registrar may on an application by such money lender for sufficient cause condone the delay and accept the statement submitted within three months from the date of the commencement of the Uttar Pradesh Regulation of Money Lending (Amendment) Act 1978 "

15. In the instant case the petitioner decree holder had submitted Form 10 on 30th November 1976 In this form the name of the debtor Nazir alone was shown The particulars of the debt had not been given In view of S 26 read with R 19 the form was consequently incomplete Thereafter on 16th December 1976 another Form 10 was submitted by the petitioner and sent to the Registrar But since the Registrar had no power to extend the period of limitation within which the registration had to be made, the application lay in the office of the Registrar

16. After the coming into force of U P Act No I of 1979 on 19th March 1979 the clerk concerned in the office of the Registrar recorded a note to the effect that in view of U P Act No I of 1979 the statement in Form 10 submitted by the petitioner earlier be

accepted and ordered to form part of the record This note was signed by the Registrar on 21st March 1979 It is not disputed that there was no separate application for condonation of delay in filing the amended form 10 It is also not disputed that there was no speaking order passed by the Registrar condoning the delay in filing Form 10 which was filed with a delay of 16 days The question, therefore arises whether such a registration shall be treated as valid or not in the eye of law

17 The proviso to S 26 of the Act, which I have already quoted above only lays down that the Registrar may on an application made by the money lender for sufficient cause condone the delay and accept the form It is not provided that the application should be a written application. An oral application can be held to be a sufficient compliance of the proviso The fact that the said note which stated the reasons for the delay having been signed by the Registrar unfriedly shows that the Registrar had condoned the delay in filing Form 10 By the mere fact that specific reasons have not been given in the order it cannot be said that the Registrar has not applied his mind to the question of condonation of delay in accepting Form 10 The signing by the Registrar of a note of the office where the reason for the delay was there and the ultimate registering of the said Form 10 in my opinion complied with the provisions contained in the proviso to S 26(1) of the Act

18. As I have already indicated in detail above Rule 19 only provides for the Registrar signing Form 10 and to keep the said record in his custody The Legislative intent behind this is only this that a bona fide debt should be recorded and registered with the registrar and nothing more Once the Registrar had accepted Form 10 and registered the debt in his record the mere fact that, technically express reasons having not been given or a written application having not been made does not take away the effect of the registration made under the provisions of the Act and the Rules framed thereunder In my opinion consequently the first two submissions made by the learned counsel for the petitioner are well founded.

19 So far as the third contention of the learned counsel for the petitioner is concerned, that too in my opinion, has substance It is not disputed that the loan in question had been mentioned in Form 10 and the same had been accepted and registered by the Registrar There was no challenge to the said registration It is a matter between the creditor and the Registrar The debtor cannot take the benefit of any irregularity in the process of registration once the registration has been accepted as valid

20 In the result the petition is allowed The orders dated 4th January 1979 and 14th January 1980 are hereby quashed The objection of Nazir respondent No 3 is dismissed The execution shall proceed in accordance with law The parties are directed to bear their own costs

Petition allowed

1986 ALL. L. J 550

B L YADAV J

Ahmad Nabi and another Applicants v State of U P Opposite Party

Criminal Misc Hnd Bail Appln No 14799 of 1985 D/ 16-12 1985

(A) Criminal P C. (2 of 1974), S 439 — Grant of bail — Second application on grounds which were not urged before — Such grounds are said to be new grounds — Bail could be granted on new grounds

Even where the first application of bail has been rejected by the High Court on an earlier occasion, it can grant bail on a fresh application on new grounds which were not urged before (Para 8)

In second application for the bail grounds of details of discrepancies in noting down number of injuries at the time of preparing panchayatnama and those actually found by doctor and regarding the discrepancy in sending of the report by Station Officer without following the procedure mentioned in Ss 157 and 158 of Criminal P C were the grounds which were not urged before when first application was decided, these grounds are said to be the new grounds and bail could be granted on these grounds Case law discussed (Paras 15 16)

BD/DD/A$89/86/KJK/MVJ-H

(B) Criminal P C (2 of 1974), Ss 439, 157 and 158 — Grant of bail — Provisions of Ss 157 and 158 are mandatory — Correct time of incident not mentioned in report under provision — Names of all accused and prosecution witnesses not mentioned in report — Discrepancy in reports noticeable — Accused are entitled to bail (Para 15)

Cases Referred	Chronological	Paras
1985 All Cri Judgments 8		5 13
1983 All Cri C 64	1983 UP Cri R 1	5 12
1981 All Cri Judgments 108		5 12
1981 All Cri Judgments 179		5 12
AIR 1980 SC 638	1980 SCC (Cri) 985	1980
Cri LJ 446		5 13
AIR 1976 SC 2304	1976 Cri LJ 1757	7 14
AIR 1976 SC 2423	1976 Cri LJ 1883	5
AIR 1972 SC 2679	1973 Cri LJ 59	7 14
AIR 1971 SC 1221	1971 Cri LJ 1063	5 13

Viresh Misra, for Applicants A G A for Respondent

ORDER — This is a second bail application filed on behalf of Ahmad Nabi and Arif under section 439 of the Code of Criminal Procedure The first bail application was rejected by this Court on 1 10-1985

2 The prosecution story in brief is that on 6-7 1985 at about 9.30 A.M Shamim Ahmad son of the informant was coming to his house and when he reached the triangular path way near Hakim Mubarak the applicants armed with knives and some other accused armed with lathis started inflicting injuries on the deceased and as a result thereof he died This occurrence was witnessed by Saghir Ahmad the father of the deceased and other witnesses, namely Sharif Ahmad etc The first information report is Annexure 1 and the post mortem examination report is Annexure 2 to the affidavit accompanying the second bail application. On behalf of the complainant and the State counter-affavits have also been filed.

3 Sri Viresh Misra, appearing for the applicant urged that under S 157 Cr P C the procedure for investigation has been provided The statutory provisions of S 157 Cr P C are fruitfully set out below in order to appreciate the arguments advanced by the learned counsel —

157 Procedure for investigation — (1) If from information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under S 156 to investigate he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall depute one of his subordinate officers not being below such rank as the State Government may by general or special order prescrib in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offenders

Provided that —

(a) When information as to the commission of any such offence is given against any person by name and the case is not of serious nature the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot

(b) if it appears to the officer in charge of the police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1) the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section and, in the case mentioned in clause (b) of the said proviso the officer shall also forthwith notify to the informant, if any in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated "

4. It was further urged that it was clear from the first information report (Annexure 1) that the date of occurrence was 6 7 1985 at 9-30 A M whereas in view of S 157 Cr P C the Officer in-charge of the police station in case he suspects the commission of offence he shall forthwith make a report of the same to the Magistrate empowered to take cognizance of such offence Further in view of S 158 Cr P C the report under S 157 Cr P C is to be submitted through such superior officer of police as the State Government, by general or special order may appoint in this

behalf In compliance with these two provisions the Station Officer sent a radiogram (Annexure-3-A) which has to the effect that at about 9-45 A M Shamim Ahmad was murdered. The time of the occurrence was accordingly changed from 9-30 A.M to 9-45 A M. and the names of all the accused persons were not mentioned nor the names of the witnesses were mentioned The learned counsel submitted that as the time itself was changed no sanctity of the time can be had and further it appears that the first information report was itself of 10 A M and the departure from the police station was also shown at 10 A M and the preparation of the panchayatnama was done since 10-30 A M to 5 P M These details were given in paragraph No 7 of the affidavit (accompanying the second bail application) and those were on the basis of the entry in the general diary dated 6-7 1985 In this way it was urged that the mandatory provisions of S 157 Cr P C were not complied with Pararaph Nos 7 and 8 of the affidavit have been replied in the counter affidavit filed by Bhagwant Singh Chauhan Sub-Inspector police station Nahtaur District Bijnor In paragraph No 6 thereof it has been stated that after the first information report was lodged the deponent came to the place of incident and recorded statements of the eye-witnesses and he stated that he noted fourteen injuries He did not deny the statement contained in paragraph Nos. 6 and 8 of the affidavit Similarly Saghir Ahmad, the complainant, although filed his counter affidavit but he stated in paragraph No 7 of his counter affidavit only this much that paragraph Nos. 7 and 8 would be replied by the Investigating Officer and he did not controvert the allegations about the radiogram and the defects pointed out in the prosecution as required by S 157 Cr P C.

5. The learned counsel further submitted by making reference to paragraph No 9 of the affidavit that in the panchayatnama only fourteen injuries were entered whereas in the post mortem examination report twenty four injuries were found on the person of the deceased About this reply was given in the counter affidavit filed by Bhagwant Singh Chauhan, Sub-Inspector and he stated that according to the deponent only fourteen injuries were found and a large number of injuries were noted by the doctor when he examined minutely In paragraph No 8 of the counter affidavit filed by the complainant it has been stated that all the injuries on the person of the deceased could not be correctly located while preparing the panchayatnama on account of the blood It was urged that there was discrepancy in the number of injuries noted in the panchayatnama and those found by the doctor It was further urged that there could be one or two mistakes in counting the number of injuries but ten injuries might not be omitted to be noted while preparing the panchayatnama This was a fact which goes to show that the panchayatnama was not correctly prepared as provided by law Reliance was placed on Kali Charan v State of U P 1981 All Cri Judgments 108 Surya Pal v State of U P 1981 All Cri Judgments 179 State of Punjab v Tarlok Singh, 1971 Cri LJ 1063 at P 1064 (AIR 1971 SC 1221 22) Manchar v State 1983 All Cri C 64 Marudanal Augusti v State of Kerala, 1980 SCC (Cri) 985 (AIR 1980 SC 638) Ishwar Singh v State of U P AIR 1976 SC 2423 and Shyama Charan v State 1985 All Cri Judgments 8

6 Sri S A Gilani appearing for the complainant and Sri R K Srivastava appearing for the State urged that even discrepancy in sending the information as required by S 157 Cr P C was not fatal and it would not vitiate the trial On account of certain mistake in the number of injuries detected by the doctor and those discovered at the time of preparation of the panchayatnama would not lead to any adverse inference against the prosecution and the applicants were not entitled to bail. The second bail application cannot be considered as a matter of right nor as an (sic) appellate court and unless new points have been discovered the second bail application could not be considered

7 The learned counsel for the complainant placed reliance on Swaran Singh v State of Punjab 1976 Cri LJ 1757 paras 8 & 9 pages 1763 (AIR 1976 SC 2304 at Pp 2308 to 2310) and Pala Singh v State of Punjab AIR 1972 S C 2679 para 7 page 2681

8. I have heard the learned counsel for the parties. It is a fact that this is a second bail application It cannot be allowed unless some new points have been made out. But in this application some new points have been made

out inasmuch as the details of the discrepancies in the investigation were not given in the first bail application The contents of paragraph No 7 of the affidavit accompanying the second bail application are entirely new I am considering this second bail application on new points not urged or taken when the first bail application was being decided, hence on new grounds the second bail application can be considered

9 I am of the opinion that the intention of the Legislature in enacting S 157 Cr P C was to make this provision and that of S 158 Cr P C mandatory It is mandatory that the Station Officer shall send a report of the first information report to the Magistrate empowered to take cognizance of such an offence Under S 157 Cr P C the words the same qualify the word information which substantially means the same contents of the information for being sent to the Magistrate and also to the superior officers of the police as required under S 158 Cr P C But in the instant case the correct time was not noted in the radiogram nor the names of all the accused or the prosecution witnesses were mentioned, hence I am of the opinion that the report sent by the Station Officer was not in compliance with the provisions of Ss 157 and 158 Cr P C

10 Further even the discrepancy pointed out by the learned counsel for the applicants regarding the number of injuries noted down in the panchayatnama and those actually found by the doctor was noticeable inasmuch as only 14 injuries were mentioned in the panchayatnama whereas twenty four injuries were found by the doctor as is clear from Annexure 2 There may be in fact some minor difference but not so much

11 As stated earlier even the statements contained in paragraphs Nos 7 and 8 of the affidavit were not denied and paragraph 9 of the affidavit was relied on in the counter affidavit of the complainant in paragraph No 98 that it appears to be that the body was found in a pool of blood, hence injuries could not have been noticed while preparing the panchayatnama, but it was no explanation

12 Kali Charan v State of U P (1981 All Cri Judgments 108) (supra) was a case where this Court held that when there appears to be some discrepancy in the time of the first information report, the applicant must be entitled to bail Surya Pal v State of U P (1981 All Cri Judgments 179) (supra) was a case where some discrepancy was held to be material and entitled the applicant for bail even though it may require further probe at the time of trial In Manohar v State 1983 All Cri C 64) (supra) it was held that the time of occurrence mentioned in the challan was 7 10 P M whereas in the first information report the time of occurrence was mentioned as 6 P M This indicated that the inquest report and the challan of the dead body were prepared but came into existence later on and on that count the trial was held to be vitiated In the instant case also difference in time given in the information sent and that noted in the first information report was material

13 In the State of Punjab v Tarlok Singh (1971 Cri LJ 1063) on page 1064 (AIR 1971 SC 1221 22) (para 5) (supra) the Supreme Court came to the conclusion that from the discussions of the evidence it is clear that the report was not lodged at 3-45 P M but at a much later hour and when the police arrived at the scene of occurrence there were consultations to decide what version should be put forward etc and such delay was held to be material to doubt the prosecution version In Marudanal August v State of Kerala (AIR 1980 SC 638) (supra) the Supreme Court held that once the first information report is held to be not genuine the prosecution could be doubted. In Shyama Charan v State (1985 All Cri Judgments 8) (supra) it was held after discussing the evidence that by the time the inquest report was prepared the first information report had not come into existence and in the inquest report, space for the crime no and the sections were left to be filled later on and was actually filled later on

14 Swaran Singh v State of Punjab (AIR 1976 SC 2304) (supra) relied upon by the learned counsel for the complainant, was a case where the delay was caused in sending the first information report to the Magistrate and the Supreme Court held that on that count alone the trial cannot be said to be vitiated This case would not help the complainant.

Similarly Pala Singh v State of Punjab (AIR 1972 SC 2679) (supra) relied upon by the learned counsel for the complainant, was a case where the scope of S 157 Cr P C (Old) was discussed and the facts were that there was some delay in receipt of the occurrence report by the Magistrate and it was held that that by itself it does not make the investigation tainted. But here the facts are entirely different There is no question of delay of receipt of the occurrence report rather the contents of the occurrence report and information are incorrect hence this case also is of no assistance to the complainant as the facts of that case were entirely different

15 In the instant case although what has been urged by the learned counsel for the applicants is subject to the evidence being led at the time of trial and I am not expressing any final opinion regarding the same But prima facie it does appear that the procedure provided under Ss 157 and 158 Cr P C which were mandatory has not been complied with Further there was discrepancy in noting down the number of injuries at the time of preparing the panchayatnama and those actually found by the doctor It appears that the provisions of S 173 Cr P C were not complied with

16. Before parting with the case it is pertinent to mention that the observations made by me above would not affect the trial of the case in any manner whatsoever However it does appear that the applicants are entitled to bail

17 Let the applicants Ahmad Nabi and Arif involved in Crime No 92/85 under Sections 147/148/149/302 I P C Police Station Nehtaur District Bijnor be released on bail on their executing personal bonds and furnishing two sureties each to the satisfaction of the Chief Judicial Magistrate Bijnor A copy of this order would be issued within days (sic) on payment of usual charges

Order accordingly

1986 ALL. L J 554

S D AGARWALA J

Kali Das Wadhwani and another Applicants v Jagnwan Das and others Opposite Parties

Civil Revn No 699 of 1983 D/ 10-10 1985 *

(A) Provincial Small Cause Courts Act (9 of 1887), S 15(1), Sch 2 Art. 4 and Explanation thereto (substituted by U P Act 37 of 1972) — Building — Definition of — Includes non residential roofed structure — Suit for eviction of lessee from a part of such structure — Cognizable by a Judge, Small Causes Court (Words and Phrases — Building)

The word building as defined in the Expln to Art 4 means a residential or a non residential roofed structure and includes other things mentioned in the Explanation Where there is a suit by a lessor for the eviction of a lessee from a non residential roofed structure then such a suit would be cognizable by a Judge Small Cause Court

(Para 16)

It is not uncommon now that a big area of land is covered by a roofed structure and the letting out is on the basis of the area of the land in order that persons may be able to carry on their business on the said land This is very common in the case of vegetable markets or other such types of markets Thus where only a small area was given on lease for carrying on business from out of a larger area with a roofed structure the same would be a building within the meaning of the Expln to Art (4) It is in fact a non residential roofed structure

(Paras 11 16)

(B) Provincial Small Cause Courts Act (9 of 1887), S 15(1), Sch 2 Art. (4) (substituted by U P Act 37 of 1972) — Suit for eviction of lessee — Transfer from regular Civil Court to Small Causes Court on allowing objection to jurisdiction raised by lessee — He is estopped from urging that suit is not triable by latter Court. (Civil P C (5 of 1908), S 9 — Evidence Act (1 of 1872), S 115).

It is well settled that a jurisdiction cannot

---

*Against the judgment of K M Sinha, 2nd Addl Dist Judge Basti D/ 25 10 1983

be conferred on a Court by consent acquiescence or waiver where there is none nor can it be ousted where it is But this principle would not be applicable to a case where the jurisdiction of the Court depends upon the determination of certain facts

(Paras 18 19)

In view of Art. (4) of the Second Schedule of the Act, it is clear that the suit, which would be cognizable by the Judge Small Cause Court, would be only that suit, which is a suit by the lessor for the eviction of a lessee from the building The two necessary ingredients required are firstly that the suit should be by a lessor for eviction of a lessee and, secondly that it must be a suit relating to a building In a case where a dispute has been raised whether the property in respect of which the suit has been filed by the lessor for eviction of a lessee is in relation to a building or not, the jurisdiction of the Court would be dependent upon the determination of the question whether the property in dispute is a building

(Para 19)

Where a suit for eviction of lessee was initially filed in a regular Civil court but on his objection that the Civil Court had no jurisdiction the suit was transferred to a Judge Small Cause Court the lessee could not be permitted to blow hot and cold in the same breath and later urge before the latter Court that it has no jurisdiction to try the suit He is estopped from claiming that the suit does not relate to a building within the meaning of Art (4) Explanation when earlier he himself has brought evidence on record to the effect that the suit relates to a building

(Paras 19 20)

Cases Referred	Chronological	Paras
AIR 1978 All 459		18
AIR 1954 SC 340		18

B D Mandhyan Sharad Mandhan and Narender Mohan for Applicants G D Srivastava A R B Khere and Sripat Narain Singh for Opposite Parties

ORDER — This is a civil revision filed under section 25 of the Provincial Small Cause Courts Act 1887 (hereinafter referred to as the Act)

2. A Suit No 85 of 1976 was originally filed in the Court of the Civil Judge Basti for recovery of arrears of rent and damages and for ejectment from the land ABCD being part of house No 382 situate in Nai Bazar Purani Basti district Basti

3. The defendants filed an objection that the suit was not cognizable by the regular court, namely the Civil Judge Basti, and was cognizable by the Judge Small Cause Court, Basti. Consequently the suit was transferred for disposal before the Judge Small Cause Court Basti The 2nd Additional District Judge Basti, exercising the powers of the Judge Small Cause Court Basti decreed the suit for ejectment as also for arrears of rent and damages for use and occupation The suit was decreed by the Judge Small Cause Court, Basti, on 25th October 1983 It is this judgment, which has been impugned in the present revision

4 I have heard the learned counsel for the parties

5 Learned counsel for the applicants has raised two contentions before me His first contention is that the suit was not cognizable by the Judge Small Cause Court and as such the impugned decree is wholly without jurisdiction The second contention of the learned counsel is that in any case the finding recorded by the court below that the revisionists have sublet the land in dispute to Achhaibar Prasad opposite party No 2 is a finding not sustainable in law

6. It is necessary to state the facts in detail showing the progress of the suit in order to examine the first contention of the learned counsel for the revisionists

7 The suit as I have already mentioned above was filed in the court of the Civil Judge Basti In para 2 of the plaint, it has been stated that the revisionists were given land 14 in length and 4 in width inside a phatak (gate) at the rate of Rs 175/ per month for carrying on their business In the Schedule attached to the plaint the land in the phatak was specifically indicated being a part of house No 382

8. A written statement was filed by the revisionists In Para 2 of the written statement, it was specifically pleaded that the property in dispute was neither a house nor a land, but was a part of a rasta In para 12 of the said

written statement, it was specifically pleaded that the suit was not at all maintainable in law in the regular Court of the Civil Judge Basti

9 On 4th August, 1980 the revisionists moved an application in the court that the suit is for ejectment and for recovery of arrears of rent and mesne profits and that the suit is only cognizable by the Judge Small Cause Court On 6th August, 1980 in view of the application it appears that in view of the facts on the record, that the property in dispute could be construed to be a building the learned counsel, for the plaintiff opposite parties accepted the contention made by the revisionists and agreed that the suit may be transferred to the Judge Small Cause Court as desired by the revisionists. The District Judge consequently on 12th September 1980 transferred the suit to the court of the Judge Small Cause Court In the court of the Judge Small Cause various Issues were framed and Issue No 6 was as under —

6 Whether the suit is not cognizable in this Court?

10. On 7th January 1981 the Court took up Issue No 6 as a preliminary issue and held that the suit was cognizable by the Judge Small Cause Court, as urged by the learned counsel for the revisionists After this issue was decided, the Court took up the hearing of the suit and, ultimately by judgment dated 25th October 1983 the suit was decreed

11 In the evidence of the revisionist who was examined as D W 1 it was categorically stated in cross examination that the land in dispute was covered by a lintel P W 1 had also stated that the land in dispute was in a gallery From the evidence on the record, it is clear that the property in respect of which the suit had been filed was an area of land covered by a roofed structure It is one of those cases where a larger area of land was covered by a roofed structure It is not uncommon now that a big area of land is covered by a roofed structure and the letting out is on the basis of the area of the land in order that persons may be able to carry on their business on the said land This is very common in the case of vegetable markets or other such types of markets In the instant case also from the facts I have already stated above it is clear that only a small area of 14′ × 4′ was given to the revisionists for carrying on business from out of a larger area with a roofed structure It is in fact a non residential roofed structure

12 Section 15(1) of the Act which is relevant for the decision of this case is quoted below

15(1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes by which the suit is triable

13 By virtue of this sub-section (1) of Section 15 of the Act the suits specified in the Second Schedule are excluded from the jurisdiction of the Court of Small Causes In the Second Schedule Article 4 is in the following terms —

4 A suit for the possession of immovable property or for the recovery of an interest in such property but not including a suit by a lessor for the eviction of a lessee from a building after the determination of his lease and for the recovery from him of compensation for the use and occupation of that building after such determination of lease Explanation — For the purpose of this Article the expression building means a residential or non residential roofed structure and includes any land (including any garden) garages and out houses, appurtenant to such building and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof "

14 This Article 4 was substituted by the U P Civil Laws (Amendment) Act, 1972 (U P Act No 37 of 1972) for the purposes of the State of Uttar Pradesh

15 On a reading of Article 4 it is clear that a suit for possession of an immovable property or for the recovery of an interest in such property has been excluded from the jurisdiction of the Judge Small Cause Court, but a suit by a lessor for the eviction of a lessee from a building after the determination of the lease and for the recovery from him of compensation for the use and occupation of that building after such determination of lease is cognizable by the Court of Small Causes

16 The Explanation further defines as to what is a building Building means a residential or a non residential roofed structure and includes other things mentioned in the

Explanation The position, therefore is that where there is a suit by a lessor for the eviction of a lessee from a non residential roofed structure then such a suit would be cognizable by a Judge Small Cause Court In the instant case as I have already held above the suit is for the eviction of a lessee by the lessor from a building which is a non residential roofed structure In the circumstances, this suit is clearly cognizable by the Court of Judge Small Causes

17 Learned counsel for the opposite parties has vehemently urged that the revisionist had himself moved an application to the effect that the suit is cognizable by a Court of Judge Small Causes and he cannot now be permitted to urge this question in this revision The argument of the revisionists, however on the other hand, is that consent cannot confer jurisdiction on a Court and if the Judge Small Cause Court had no jurisdiction to try the suit, the decree would be a nullity as it is a case of inherent lack of jurisdiction

18. It is well settled that a jurisdiction cannot be conferred on a Court by consent, acquiescence or waiver where there is none nor can it be ousted where it is. Acquiescence waiver or consent of the parties may be relevant in objections relating to pecuniary or territorial jurisdiction of the Court but these factors have no relevance where the Court lacks inherent jurisdiction which strikes at the very root or authority of the Court to pass any decree and renders the decree if passed a nullity (See Chandra Bhushan Khanna v Brij Nandan Singh AIR 1978 All 439 and Kiran Singh v Chaman Paswan AIR 1954 SC 340)

19 The above mentioned principle in my opinion would not be applicable to a case where the jurisdiction of the Court depends upon the determination of certain facts. In the instant case, in view of Article 4 of the Second Schedule of the Act, it is clear that the suit which would be cognizable by the Judge Small Cause Court, would be only that suit, which is a suit by the lessor for the eviction of a lessee from the building The two necessary ingredients required are firstly that the suit should be by a lessor for eviction of a lessee and secondly that it must be a suit relating to a building In a case where a dispute has been raised whether the property in respect of which the suit has been filed by the lessor for eviction of a lessee is in relation to a building or not the jurisdiction of the Court would be dependent upon the determination of the question whether the property in dispute is a building If the parties agree at a certain stage of the proceedings that the suit relates to a building then in that event, they cannot be permitted to blow hot and cold in the same breath and later urge that the suit does not relate to a building In the instant case initially the revisionists urged that the suit was in relation to a building The evidence was brought on the record to the same effect The learned counsel for the plaintiff opposite party finding that the suit would relate to a building ultimately agreed with the revisionists and permitted the case to be transferred to the court of the Judge Small Causes The revisionists are now estopped, in law in my opinion from urging that the suit does not relate to a building and, as such it is not cognizable by the Court of Judge Small Causes

20. It is true that once the suit relates to a property which is not a building there would be inherent lack of jurisdiction in the court of the Judge Small Causes I consequently accept the contention raised by the learned counsel for the opposite party that the revisionist is estopped from challenging that the suit does not relate to a building and, as such, the decree passed by the Court is without jurisdiction The contention consequently raised by the learned counsel for the revisionists is, in my opinion without substance firstly for the reason that the revisionist is estopped from taking the plea now that the suit does not relate to a building and, secondly from the facts, it is clear that the suit relates to a building

21 In so far as the second contention of the learned counsel is concerned, the court below examined the evidence on the record and thereafter came to the conclusion that the property had been sublet to Achhaibar Prasad This clearly is a finding of fact and I do not find any legal infirmity in the same In any case since in the instant case it is now admitted on the record and also by the parties that the possession of the property has already been delivered to the plaintiff opposite party the dispute now only remains regarding payment of rent and damages for use and

occupation The revisionist did not hand over possession of the premises in dispute to the landlord Till the possession was handed over back to the landlord the revisionist tenant was liable to pay rent. Consequently the decree for arrears of rent and damages for use and occupation passed against the revisionists is in accordance with law

22. In the result the revision fails and is accordingly dismissed In the circumstances of the case the parties are directed to bear their own costs

Revision dismissed

1986 ALL. L. J 558

V K MEHROTRA J

Swami Nagar Nagrik Parishad Agra and others, Petitioners v State of U P and others Respondents

Civil Misc Writ Petn No 9683 of 1985 D/ 18-9 1985

(A) Constitution of India, Art. 226 — Procedure — Finding in previous writ petition challenging sanction to layout plan of society under U.P (Regulation of Building Operations) Act 1958 stating that permission was granted under S 7(2) of the Act on application of society — Plea in subsequent petition between parties that sanction was deemed sanction under S. 7(4) of the Act is not open to society — Earlier finding is binding between parties. (U P (Regulation of Building Operations) Act (34 of 1958), S. 7(2), (4)). (Para 6)

(B) U P (Regulation of Building Operations) Act (34 of 1958), S 15(2) — Appeal against permission to raise construction — Competent at instance of one reasonably aggrieved by permission and is not mere busy body

As the Act itself enables a person aggrieved by the grant of permission to construct to file an appeal which would presuppose that in case permission is accorded by the prescribed authority in spite of the presence of the grounds upon which it should refuse permission under S 7(2A) or the permission enables the recipient thereof to act in contravention of the Regulations issued under the Act a grievance can be made about it in an appeal by one who can reasonably be said to be aggrieved by the action of the prescribed authority and is not a mere busybody or meddlesome interloper In this connection it cannot be said that the rule laid down in AIR 1982 SC 149 that apart from a person who complains of a specific legal injury suffered by him or a determinate class or group of persons a member of public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provisions of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision does not extend to statutory appeal nor can a grievance be made that such view may lead to innumerable appeals and may vitally affect the rights of those who have obtained the permission from the prescribed authority by prolonging the period during which they may be locked up in litigation and give a handle to anyone on the street to hamper the initiation or progress of the work pursuant to the permission granted The circumstance that the grant of permission may be assailed in various appeals may undoubtedly cause some harassment to the recipient of the permission in a number of appeals yet the consideration of ensuring redress for public injury arising from breach of public duty and arbitrary decision affecting the rights of public generally by a statutory authority far overweighs the consideration of harassment to the recipient of the permission (Para 15)

(C) U P (Regulation of Building Operations) Act (34 of 1958), S 15(2) — Appeal under — Delay — Condonation — Provisions of Limitation Act do not apply to proceeding under the Act — Absence of provision for excluding time taken for obtaining copy of order of Prescribed authority — Condonation of delay by resort to S 5 or 12 of Limitation Act not permissible (Limitation Act (36 of 1963), Pre.) (Para 23)

(D) U P (Regulation of Building Operations) Act (34 of 1958), S 15-A (2) — Revision — Delegation of power — Special Secretary entrusted with power of dealing with revisions in allocation of functions under Art. 166(3) — Order passed by him is not vitiated on ground of delegation of power in

contravention of S 15-A(2) — There is in fact no delegation AIR 1974 SC 2192 Rel. on (Constitution of India, Art. 166(3)).

(Para 24)

Cases Referred Chronological	Paras
AIR 1985 SC 1279	21
1984 All LJ 649 (1984) 10 All LR 642	20
1984 All LJ 1259	3 6 7
(1984) Civil Misc Writ No 8300 of 1975 D/ 9-5-1984 (All) Lakhan Lal Jhunjhunwala v State of U P	19 21
AIR 1982 SC 149	14 15
AIR 1977 SC 523 1977 Tax LR 1626	22
AIR 1976 SC 177 (1976) 2 SCR 845	21
AIR 1974 SC 2192 1974 Lab IC 1380	24
AIR 1970 SC 209 (1970) 1 SCR 396 1970 Lab IC 269	21
AIR 1969 SC 1335 (1970) 1 SCR 51 1969 Lab IC 1538	21
1967 All LJ 48 1967 All WR (HC) 141	20
AIR 1961 SC 1500	20
(1960) 3 All ER 408 (1960) 3 WLR 866 Buxton v Minister of Housing and Local Govt	12

Sri Swami Dayal Rajesh Tandon and R J D Misra for Petitioners Standing Counsel for Respondents

ORDER — Swami Nagar is a mohalla in Dayalbagh which is a religious colony in district Agra Dayalbagh is a Town area Regulated Area Dayal Bagh was constituted for Dayalbagh under S 3 of the U P (Regulation of Building Operations) Act 1958 (for convenience the Act) and a Master plan is said to have been proposed for the Regulated Area Dayalbagh Swami Nagar Nagrik Parishad (briefly the Parishad) is said to be a welfare unit for looking after the welfare of the residents of Swami Nagar There is a registered Society known as Allora Sahkari Avas Samiti Limited (hereafter the Samiti) which is said to be a housing society On Aug 9 1983 it submitted a plan for sanction to the Prescribed Authority Dayalbagh Regulated Area with a view to develop certain plots as a Housing colony

2. The Samiti submitted the layout plan last amended on Oct 6 1982 under S 7 of the Act to Prescribed Authority which did not pass any order under S 7(3) granting permission or communicated any objection to the Samiti. On Jan 12 1983 a written notice was given by the Samiti to the Prescribed Authority under S 7(4) The notice was served but the Prescribed Authority did not pass or communicate any order Its sanction to the layout plan was therefore assumed to have been made by the Samiti The Samiti says that it had informed the Prescribed Authority that it was going ahead with the layout plan through its letter of July 2 1983 upon which by letter of July 28 1983 the Prescribed Authority informed it that it could continue with its development work on certain conditions specified in the letter The Samiti further says that it entered into an agreement with the Prescribed Authority on Aug 9 1983

3. The President and Secretary of the Parishad filed an appeal under S 15(2) of the Act before the Controlling Authority against the Permission said to have been accorded by the Prescribed Authority on Aug 9 1983 to the layout plan submitted by the Samiti This was on Oct 21 1983 It has been asserted in the memorandum of appeal that the order came to the knowledge of the appellant on Oct 15 1983 The appeal was allowed by the Controlling Authority on June 1 1984 and the permission granted by the Prescribed Authority on Aug 9 1983 was cancelled The Samiti assailed the appellate order before this Court in Writ Petn No 7935 of 1984 The respondents in that writ petition which included the President and Secretary of the Parishad were given notice that the petition would be disposed of finally at the admission stage Parties exchanged affidavits On Aug 23 1984 the writ petition was dismissed on the ground that the Samiti had a clear efficacious alternative remedy by way of revision under S 15-A of the Act to the State Government against the order of the Controlling Authority dt June 1 1984 by which it had set aside the permission granted by the Prescribed Authority on Aug 9 1983 The judgment is reported in 1984 All LJ 1259 A revision was filed by the Samiti before the State Government against the order of the Controlling Authority under S 15-A of the Act The President and Secretary of the Parishad were made parties to it The State Government heard the parties and by its order of June 15 1985 allowed the revision It held that the appeal filed by the President and Secretary of the Parishad before the Controlling Authority on Oct. 21 1983 was barred by limitation The Controlling Authority

could not, therefore interfere with the order passed by the Prescribed Authority on Aug 9 1983 The order of the Controlling Authority was set aside with the result that the order passed by the Prescribed Authority revived The Parishad as also its President and Secretary then came to this Court for relief through the present writ petition under Art 226 of the Constitution The Samiti is respondent No 5 in the petition It appeared when the petition was presented through its counsel and later filed counter affidavit. The petitioners filed their rejoinder affidavit and as jointly prayed by the counsel for both the parties the matter was heard at length at the admission stage and is being disposed of finally

4. The order of the State Government dt June 15 1985 is annexure 7 to the writ petition Prior to it, on May 17 1985 the State Government passed an order disposing of a preliminary objection raised on behalf of the parishad to the maintainability of the revision This order is annexure 6 to the petition The State Government has taken the view that the order of Aug 9 1983 could be challenged in an appeal filed within thirty days thereof and inasmuch as the appeal was admittedly filed on Oct. 21 1983 before the Controlling Authority it was barred by limitation The State Government held that the Controlling Authority was in error in condoning the delay in the presentation of the appeal under S 5 of the Limitation Act, Section 5 was not available to Controlling Authority and that there was no prayer made on behalf of the appellant for condonation of delay The Controlling Authority was not right in suo motu condoning the delay As also that the Controlling Authority had no power of condoning the delay in the presentation of the appeal which was filed under S 15(2) of the Act, which was a special Act under the Act itself

5. At the outset an objection of Sri G N Verma, appearing for the Samiti deserves notice The objection is that the grant of sanction to the layout plan by the Prescribed Authority was in the nature of a deemed permission under S 7(4) of the Act against which no appeal is provided under S 15(2) Particular stress has been laid on sub-secs. (1) and (2) of S 15 which read thus

"15 Orders granting or refusing permission to be final (1) Any order made under sub-sec. (2) of S 7 refusing or granting any permission shall, subject to the provisions of sub-sec (2) be final and shall not be questioned in any court

(2) Any person aggrieved by an order under S 7 refusing or granting permission or by an order under S 7 A cancelling a permission or by an order under S 10 directing demolition of any construction or by the initiation of prosecution for any offence punishable under this Act may within thirty days from the date of such order prefer an appeal to the Controlling Authority and the order of the Controlling Authority shall be final and shall not be called in question in any court

6. This objection is not open to the Samiti in the present writ petition In the earlier writ petition No 7935 of 1984 (reported in 1984 All LJ 1259) (Allora Sahkari Avas Samiti Ltd v Controlling Authority Agra) the decision of this Court dated August 23 1984 inter partes is that the prescribed Authority had approved the layout plan submitted by the Samiti by order dt Aug 9 1983 against which an appeal taken to the Controlling Authority by the President and Secretary of the Parishad was allowed by an order of June 1 1984 cancelling the permission granted by the Prescribed Authority The Samiti was directed to challenge the appellate order of the Controlling Authority in a revision before the State Government. The judgment of this Court, which has admittedly become final contains the following observation —

In the instant case from the facts on record, it is clear that the petitioner himself applied to the Prescribed authority for sanction of the plan which implied that he wanted permission for development of the site in the regulated area It is this permission which was granted to the petitioner by an order dt 9th Aug 1983 and the respondents filed an appeal under S. 15 of the Act It cannot, therefore be said that the appeal against the order dt. 9th Aug 1983 was not maintainable before the Controlling Authority as the order sanctioning plan and granting permission to the petitioner was nothing else but an order passed under S 7 of the Act "

The finding aforesaid is binding between the parties and for the disposal of this writ petition, it will have to be accepted that there was an

order passed under S 7 on Aug 9 1983 against which an appeal was filed under S 15(2) by the President and Secretary of the Parishad

7 The objection that the President and Secretary of the Parishad were not aggrieved persons within the meaning of the Act and had no locus standi to file appeal before the Controlling Authority was pressed with some emphasis by Sri G N Verma before me This objection was raised in the earlier Writ Petn No 7935 of 1984 (reported in 1984 All LJ 1259) also but this Court did not go into the objection as it felt that the question could clearly be gone into by the State Government while dealing with the revision The objection can be appreciated better (See) first some provisions

8. The U P (Regulation of Building Operations) Act 1958 is an Act to provide for the regulation of building operations in Uttar Pradesh and in its preamble states that

Whereas it is expedient to provide for the regulation of building operations with a view to prevent haphazard development of urban and rural areas

It is hereby enacted in the Ninth Year of the Republic of India as follows "

Under S 3 the State Government is authorised to declare an area to be regulation area if in the opinion of the State Government any area within U P requires to be regulated with a view to the prevention of bad laying out of land, haphazard erection of buildings or growth of sub standard colonies or with a view to the development and expansion of that area according to proper planning Development has been defined in S 2(e) to mean the carrying out of building engineering mining or other operations in on over or under land or the making of any material change in any building or land S 5 empowers the State Government, by notification in the Gazette to issue such Regulations not inconsistent with the Act or with the Rules as it may consider necessary regarding the matters mentioned in the section in relation to the regulated area. Under S 5-A the State Government can cause a Master Plan to be prepared in case it is of opinion that any regulated area requires to be developed according to the Master Plan. Section 6 then says that "no person shall undertake or carry out the development of any site in regulated area or erect re-erect or make any material change in any building except in accordance with the regulations, if any issued under the Act and with previous permission of the prescribed authority in writing Prescribed Authority has been defined in S 2(g) to mean a person or body of persons appointed as such by the State Government in respect of a regulated area Section 7 in so far as it is material, reads thus —

7 Application for permission — (1) Every person desiring to obtain the permission referred to in S 6 shall make an application in writing to the prescribed authority in such form and containing such information as may be prescribed in respect of the development, building excavation or means of access to which the application relates

(2) On receipt of such application the Prescribed Authority after making such inquiry as it considers necessary shall by order in writing either grant the permission subject to such conditions if any as may be specified in the order or refuse to grant such permission

(2A) The only grounds on which permission may be refused are the following namely —

(a) That the work or the use of the site for the work or any of the particulars comprised in the site plan ground plan elevations, sections or specifications would contravene the provisions of any law or any order rule or regulation made under this Act or any other law

(b) that the application for such permission does not contain the prescribed particulars or is not made or signed in the prescribed manner

(c) that any information or document required by the prescribed authority under the rules or regulations has not been duly furnished

(d) that the proposed building would be an encroachment upon any public premises as defined in the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972

(e) that the site of such buildings does not abut on a street, and there is no access to such building from any such street by a passage or

pathway not less than twelve feet wide appertaining to such site

(f) that the site for the work forms part of the area, the layout plan of which has not been sanctioned

(g) that the use of the proposed building or the plan is not in conformity with the Master Plan

(3) Where permission is refused, the grounds of such refusal shall be communicated to the applicant in such manner as may be prescribed within ninety days of the receipt of such application

(4) Where no orders are communicated within the period mentioned in sub-s (3) granting or refusing the permission the applicant may by a written communication call the attention of the prescribed authority to the omission or neglect, and if such omission or neglect continues for a further period of thirty days the prescribed authority shall be deemed to have permitted the proposed work

Provided that nothing in this sub-section shall be construed to authorise any person to act in contravention of the Regulations issued under this Act

Section 7 A then provides that —

"7 A Cancellation of permission obtained under fraud.— If at any time after a permission has been granted under sub-sec (2) of S 7 the prescribed authority is satisfied that such permission was granted in consequence of any material misrepresentation made or any fraudulent statement or information furnished, the prescribed authority may cancel such permission for reasons to be recorded in writing and any work done thereunder shall be deemed to have been done without such permission

Section 9 provides for penalties for breach of the provisions of the Act and S 10 enables the prescribed authority to direct demolition of a building in certain cases Section 15 which has been read in its material part earlier makes an order granting or refusing permission under S 7 to be final subject to an order passed in an appeal under sub-sec (2) S 15-A enables the State Government to revise an order passed by the Controlling Authority It reads thus —

"15-A Revisional powers of State Government. — (1) The State Government may at any time either of its own motion or on an application made to it in this behalf call for the record of any case disposed of by the Controlling Authority for the purpose of satisfying itself as to the legality or propriety of any order passed under this Act and may pass such orders in relation thereto as it may think fit

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard

(2) The State Government may by notification in the Gazette delegate the powers conferred upon it by sub-sec. (1) to any officer or authority who shall not be inferior to the Chairman of the Controlling Authority

9 The provisions of the Act have been given overriding effect in S 17 Section 19 empowers the State Government to frame rules and regulations to carry out the purpose of the Act

10 The scheme of the Act is clear Its object is to regulate and control development of building activities within a regulated area Permission of the Prescribed Authority must be obtained by a person before undertaking or carrying on development of any site or erection etc of any building in the regulated area. The permission is to be sought by making an application in the prescribed form Permission must be granted or refused by an order in writing and where it is refused, the grounds of refusal are to be communicated to the applicant in the prescribed manner within ninety days of the receipt of the application Where orders are not communicated within ninety days the applicant seeking permission may call the attention of the prescribed authority to its omission or neglect by a written communication and if the prescribed authority persists with its omission or neglect for a further period of thirty days it is to be deemed to have permitted the proposed work The Prescribed Authority may cancel the permission if it is satisfied that it was granted in consequence of any material misrepresentation or fraudulent statement or information furnished to it The order granting or refusing permission under S 7(2) can be challenged in appeal under S 15 by any person aggrieved by it Finality attaches to an order made under sub-sec. (2) of S 7 granting or refusing permission subject to the provisions

of sub-sec (2) of S 15 This is provided in S 15(2)

11. An applicant seeking permission of the prescribed authority under S 7 may be aggrieved by its refusal. He would not be aggrieved by the grant of permission Yet the grant of permission has been made subject to challenge in an appeal. Obviously a person other than the one applying for the permission may be aggrieved by an order granting permission He can maintain an appeal under S 15(2) In the absence of an appeal the grant or refusal of permission by an order made under S 7(2) would become final. But where there is an appeal, it is the order of the appellate authority i e the Controlling Authority which has been made final. Sub-sec (2) of S 15 gives a right of appeal to any person aggrieved by an order under S 7 granting permission whether the grant is made under sub-sec (2) of S 7 or is deemed to have been made under sub-sec (4) of S 7 That is clear by the language of sub-sec (2) which does not confine the order against which the appeal would lie only to an order made under sub-sec (2) of S 7 unlike S 15(1) which specifically refers to S 7(2)

12. Counsel for the Samiti urges that a person may be aggrieved by the grant of permission whose personal rights may be prejudicially affected by the grant He can be a person whose property may be adversely affected by the proposed development in regard to which permission was sought and granted. He may be a person who may be claiming interest in the land in respect whereof permission has been granted But some injury must be caused to his own rights before he can claim to be a person aggrieved by the grant of permission Reliance has been placed, in support of this submission upon a decision of Queen s Bench Division in Buxton v Minister of Housing and Local Govt (1960) 3 All ER 408 There the owners and occupiers of certain land applied under S 14 of the Town and Country Planning Act 1947 to Saffron Walden Rural District Council, a local authority for permission to develop their land by digging chalk The permission was refused by the local authority An appeal against this refusal was taken to the Minister of Housing and Local Government under S 16 of the Act and an inquiry was got made by the Minister into the refusal At this inquiry apart from the applicants the local authority and four landholders whose land was adjacent to that of the applicants and was being used for agricultural and residential purposes were permitted to lead evidence and were heard The Minister did not accept the report submitted by the Inspector who had made the inquiry and allowed the appeal He gave reasons for his decision The local authority did not challenge the decision of the Minister but the landowners whose land adjoined the land where the development was to be made filed an appeal under S 31 of the Town and Country Planning Act. That section permitted a person aggrieved by any action on the part of the Minister to question the validity of his action on certain grounds. A preliminary objection was raised to the maintainability of the appeal filed by the landowners on the ground that they were not the persons aggrieved Salmon, J., who wrote the judgment of the Queen s Bench, while upholding the preliminary objection observed, inter alia, that

"Superficially there is much to be said for the view that the applicants (landowners of adjoining land) are aggrieved by the Minister s action

If I could approach this problem free from authority without regard to the scheme of the town and country planning legislation and its historical background, the arguments in favour of the applicants on the preliminary point would be most persuasive if not compelling The scheme of the town and country planning legislation in my judgment, is to restrict development for the benefit of the public whether they live close to or far from the proposed development

The legislature made the local planning authority under the general supervision of the Minister custodians of the public s rights. It is plain from S 16 of the Act of 1947 that if the local planning authority grants permission for development, there can be no appeal to the Minister of any kind. It is only if the local planning authority refuses permission or grants it on unacceptable terms that the applicant for planning permission may appeal to the Minister It would be strange indeed if the present applicants who would have had no right of appeal to the Minister from the local authority s grant of planning permission nevertheless have the right to apply to the

Courts from the Minister s grant of planning permission I doubt whether the present applicants had any legal right to appear at the inquiry

In my judgment, the Minister s action which these applicants seek to challenge infringed none of their common law rights. They have no rights as individuals under the Statutes Accordingly in my judgment none of their legal rights has been infringed and in these circumstances it could not in my view have been the intention of the legislature to enable them to challenge the Minister s decision in the Courts

Apart from the authority and the scheme of the town and country planning legislation there is as I have already indicated much to be said for the view that in ordinary parlance the applicants whose amenities may be spoilt and the value of whose land may be diminished by the proposed development are persons aggrieved by the Minister s decision I however must apply the principle to which I have referred and I must have regard to the general scheme of the legislation The relevant statutes, in my judgment, confer no right on the applicants as individuals Accordingly none of their legal rights has been infringed and no legal obligation has been imposed on them by the Minister s action

13. The principle which has been accepted by the Queen s Bench in this decision is that before a person can be said to be aggrieved person there should be infringement of his own legal right

14 The question was examined at great length by our Supreme Court in S P Gupta v Union of India, AIR 1982 SC 149 After noticing the view taken by English and American Courts in this respect the Supreme Court chose to expand the ambit of persons who could be said to be having the right to assail an action of the State or a public authority It laid down that apart from a person who complains of a specific legal injury suffered by him or a determinate class or group of persons, a member of public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provisions of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision In other words the Supreme Court recognised the fact that a public injury distinct from a personal legal injury can also enable a member of public having sufficient interest to seek redress before a Court of law Dealing with the question of what would be sufficient interest to give standing to a member of the public the Supreme Court observed (in para 19-A of the report) that

It is for this reason that in public interest litigation — litigation undertaken for the purpose of redressing public injury enforcing public duty protecting social collective diffused rights and interests or vindicating public interest any citizen who is acting bona fide and who has sufficient interest has to be accorded standing What is sufficient interest to give standing to a member of the public would have to be determined by the Court on each individual case It is not possible for the Court to lay down any hard and fast rule or any strait jacket formula for the purpose of defining or delimiting sufficient interest It has necessarily to be left to the discretion of the Court

It however made it clear (in para 18 of the report) that —

The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busybody or a meddlesome interloper but who has sufficient interest in the proceeding

The rule that is laid down by the Supreme Court thus excludes a mere busybody or meddlesome interloper and enables the Court having regard to the circumstances of a particular case, to find out whether the person complaining of a public injury has sufficient interest in the subject matter of dispute to give him standing to question the action of the State or a public authority

15 The submission of Sri Verma that the rule laid down by the Supreme Court in S P Gupta s case (AIR 1982 SC 149) does not extend to a statutory appeal, like the one in the present case is difficult to accept As seen earlier the U P (Regulation of Building Operations) Act 1958 itself enables a person

aggrieved by the grant of permission to file an appeal which would presuppose that in case permission is accorded by the prescribed authority in spite of the presence of the grounds upon which it should refuse permission under S 7(2A) or the permission enables the recipient thereof to act in contravention of the Regulations issued under the Act, a grievance can be made about it in an appeal by one who can reasonably be said to be aggrieved by the action of the prescribed authority and is not a mere busybody or meddlesome interloper The apprehension that this view may lead to innumerable appeals and may vitally affect the rights of those who have obtained the permission from the prescribed authority by prolonging the period during which they may be locked up in litigation and give a handle to anyone on the street to hamper the initiation or progress of the work pursuant to the permission granted may ostensibly be justified but on closer scrutiny it would be clear that unless sufficient interest is established by the person assailing the grant of permission and he approaches the appellate authority within a reasonable period an appeal at his instance would not be maintainable The circumstance that the grant of permission may be assailed in various appeals may undoubtedly cause some harassment to the recipient of the permission in a number of appeals yet the consideration of ensuring redress for public injury arising from breach of public duty and arbitrary decision affecting the rights of public generally by a statutory authority far over weighs the consideration of harassment to the recipient of the permission The extraneous influences and considerations which quite frequently affect the action of statutory authorities in our social set up today impel the Courts of law not to ignore the current realities of life while interpreting the provisions of a statute The appellate authority would invariably examine at the very inception a grievance about the standing of the appellant before proceeding to deal with the matter on its merits Any error on its part can be corrected through suitable statutory remedy

16 The question in each case whether a person assailing the grant of permission in an appeal before the Controlling Authority or on a Revision before the State Government is a mere busybody or meddlesome interloper or has he sufficient interest to do so would necessarily be answered upon the facts of each case The nature of objections that are raised by the appellant or the likely effect of the execution of the work or development under the permission granted upon him or persons like him would be considerations upon which would depend the right to maintain the appeal or the revision For example if the execution of the work permitted to be done is likely to result in greater hazards for the people living in the vicinity or is likely to substantially affect the convenience of life to their prejudice or may result in enhancing the chances of pollution or unhealthy disturbance to tranquil existence it may afford a person the necessary standing to assail the action of the public authority The circumstances justifying the grant of standing to an appellant or denying it may be so diverse and numerous that it is difficult to enumerate them However the reasonable test of there being a public injury and existence of sufficient interest in the person challenging the action of the statutory body can always be applied before determining the question whether the appeal or revision should be entertained

17 A look at annexure CA-8 which is a copy of the grounds of appeal filed by the President and Secretary of the Parishad before the Controlling authority against the grant of permission to the Samiti, would be enough to satisfy any reasonable person that the appellant Parishad is not a mere busybody or meddlesome interloper in the matter Whether the grounds raised in the appeal are justified on merits is not being gone into in these proceedings for they have to be judged by the authorities under the Act in the first instance The limited question is whether an appellant raising these grounds can be characterised as a person who does not have sufficient interest to maintain an appeal. To that the answer is clearly in favour of the appellant

18 The revisional order of the State Government says that the appeal before the controlling authority was barred by limitation This view has been assailed as incorrect by the petitioner Parishad before me It has been justified as correct by the Samiti

19 In paras 3 to 7 of the writ petition it has been asserted by the Parishad that on Sept., 7 1983 when the President and Secretary of the Parishad visited the office of Dayalbagh regulated area, they found the proposed Dayalbagh Master Plan from which they learnt that there was provision for residential area near Swaminagar After further inquiry and

discussion amongst the residents of Mohalla Swaminagar an application for copy of the sanctioned plan was made by the Parishad on Sept. 15 1983 The copy was ultimately received by them on Oct 13 1983 and the appeal before the Controlling Authority was filed on Oct 21 1983 The appeal was thus within the prescribed limitation of thirty days from the date of the knowledge of the order of sanction dt. Aug 9 1983 The counter affidavit has dealt with the question of limitation in paras 32 33 and 34 It has been said in these paragraphs that an application for a copy of the sanctioned plan was filed by the Parishad on Sept. 14 1983 and on the next day an application for inspection of the sanctioned plan was made before the Prescribed Authority by Gurdas Mal, a member of the Parishad who actually made inspection of the plan on Sept 16 1983 The appeal having not been filed within thirty days of the date of the knowledge of the order of sanction was barred by limitation The order of the State Government of June 15 1985 says that the appeal should have been filed within thirty days of Aug 9 1983 which was the date of the sanction of the plan It further says that the Controlling Authority was in error in condoning the delay in the presentation of the appeal under S 5 of the Limitation Act without there being any application or prayer for condonation The revisional order relies upon the decision of this Court in Lakhan Lal Jhunjhunwala v State of U P (Civil Misc Writ No 8300 of 1975 decided on May 9 1984)

20. The submission of the Parishad is that the period of limitation would start running not from the date of the order i e Aug 9 1983 but from the date when the Parishad, which was aggrieved by the decision came to know about it. The argument is based upon the decision of the Supreme Court in the case of Harish Chandra Roy v Dy Land Acquisition Officer AIR 1961 SC 1500 where it has been held that the date of the award for purposes of proviso (b) of S 18(2) of the Land Acquisition Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively and further it will be unreasonable to construe the word in a literal or mechanical way Reliance was also placed upon Lal Chand v Distt. Judge Mathura, 1967 All LJ 48 in which the date of the order under S 11(2) of the U P Imposition of Ceiling on Land Holdings Act 1961 was interpreted to mean the date when the aggrieved party came to have knowledge of the order applying the decision of the Supreme Court in Raja Harish Chandra case and further upon the decision of this Court in Ghanshyam Upadhyay v State of U P (1984) 10 All LR 642 (1984 All LJ 649) to the same effect

21 The counsel for the Samiti says that the question whether the date of commencement of limitation should be from the date of the knowledge or it would be the date of the sanction namely Aug 9 1983 need not be gone into as, even on assumption that limitation shall start running from the date of knowledge the appeal was, in any case, barred by limitation Assuming, proceeds the argument, that the Parishad came to have knowledge of the sanction order dt Aug 9 1983 only on Sept 15 1983 there was no justification for not filing the appeal within thirty days thereof Further the appeal filed after Oct 13 1983 i e on Oct 21 1983 was clearly barred by limitation Section 5 of the Lim Act does not apply nor does S 12(2) thereof The time taken in obtaining the copy of the order of sanction could not be excluded The decision of the Division Bench of this Court in Writ Petition No 8300 of 1975 which lays down that the provisions of S 5 of the Lim Act are inapplicable in proceedings under the U P (Regulation of Building Operations) Act, 1958 is binding upon me as a single Judge The condonation of delay in the presentation of appeal by the Controlling Authority under that provision was therefore bad The question is whether the time taken by the Parishad in obtaining a copy of the order could be excluded in computing the period of limitation The exclusion is permissible under S 12(2) of the Lim Act which according to the learned counsel for the Parishad, was applicable in the instant case on account of S 29(2) of that Act Several decisions were cited. It is not necessary to notice them in view of a very recent decision of the Supreme Court in Sakuru v Tanaji (Civil Appeal No 1852 of 1979 — decided on July 10 1985) (reported in AIR 1985 SC 1279) In that case the question was whether the provisions of S 5 of the Lim Act 1963 could be invoked for condoning delay in the filing of an appeal before the Collector under S 90 of the Andhra Pradesh (Telangana Area) Tenancy and

Agricultural Lands Act 1950 The Supreme Court after noticing several of its earlier decisions took the view that in the absence of any express provision in that regard the provisions of the Lim Act 1963 would not apply to proceedings which are not proceedings before a Court This is what the Supreme Court said

It is well settled by the decisions of this Court in Town Municipal Council Athani v Presiding Officer Labour Court Hubli (1970) 1 SCR 51 (AIR 1969 SC 1335) Nityananda M Joshi v Life Insurance Corpn of India (1970) 1 SCR 396 (AIR 1970 SC 209) and Sushila Devi v Ramanandan Prasad (1976) 2 SCR 845 (AIR 1976 SC 177) that the provisions of the Limitation Act, 1963 apply only to proceedings in Courts and not to appeals or applications before bodies other than Courts such as quasi judicial Tribunals or executive authorities notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure The Collector before whom the appeal was preferred by the appellant herein under S 90 of the Act not being a Court the Lim Act as such had no applicability to the proceedings before him But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority such as the Collector the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that provisions of S 5 of the Lim Act shall be applicable to such proceedings Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of S 5 of the Act for condonation of the delay in the filing of the appeal

22 The decision of the Supreme Court in Commr of Sales Tax U P v Madanlal Dan & Sons AIR 1977 SC 523 was also rendered in a case where the revision lay before the Judge (Revision) who was a Court The Supreme Court had upheld the applicability of S 12(2) by virtue of S 29(2) of the Limitation Act 1963 in the case of a revision under the U P Sales Tax Act filed before the Judge (Revisions) Who was admittedly a Court under S 10 of the Act

23 In the instant case there is no dispute that there is no express provision in the U P (Regulation of Building Operations) Act, 1958 making provisions of the Limitation Act applicable to the proceedings under it Quite clearly therefore provisions of S 12(2) would not apply to an appeal or revision filed before the Controlling Authority or the State Government In this view of the matter it is not necessary to examine the correctness of the objection raised on behalf of the Samiti that copy of the order of sanction is not required to be filed before the Controlling Authority while filing an appeal before it so that there is no justification for the Parishad to seek exclusion of time taken in obtaining the copy of that order in computing the period of limitation for the appeal Even on the assumption that the filing of a copy of the order was necessary the appeal before the Controlling Authority not being a proceeding before a Court and there being no specific provision in the U P (Regulation of Building Operations) Act, 1958 to exclude the time so taken or to condone the delay in the presentation of the appeal by recourse to S 5 or 12 of the Limitation Act the appeal filed on Oct 21 1983 by the Parishad before the Controlling Authority was clearly barred by limitation The State Government was not in error in taking that view

24 The revisional order of the State Government is also challenged on the ground that it could not be passed by an officer lower in rank to the one who passed the order as Controlling Authority This argument is sought to be founded upon the provision contained in S 15 A(2) of the Act which says that the State Government could delegate its power under sub-sec (1) to any officer or authority who shall not be inferior to the Chairman of the Controlling Authority It is said that the Chairman of the Controlling Authority was an officer of the rank of Commissioner while the impugned order of the State Government was passed by a Special Secretary who was inferior to the Chairman of the Controlling Authority The submission appears to be made without appreciating the fact that the State Government itself has passed the revisional order and has not delegated its power to any other authority The Special Secretary may have been entrusted with the function of dealing with the revision application under the U P (Regulation of Building Operations) Act in the allocation made of its different functions under the rules of business under

Art 166(3) of the Constitution Such allocation does not amount to delegation of power as seems to be understood by the petitioner See Samsher Singh v State of Punjab AIR 1974 SC 2192 In that case it was inter alia observed in para 35 that

"When a civil servant takes a decision he does not do it as a delegate of his Minister He does it on behalf of the Government The Officers are the limbs of the Government and not its delegates Where functions are entrusted to a Minister and these are performed by an official employed in the Ministry s department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister"

The order of the State Government cannot be treated to be invalid on this account

25 The Parishad also says that the Samiti got some land transferred from persons belonging to scheduled caste which was void on account of S 157 A of the U P Zamindari Abolition and Land Reforms Act The Addl District Magistrate Agra declared these transfers of land comprising of an area of 18 bighas 11 biswas and 4 biswansis bad by order dt Aug 27 1984 and possession thereof was taken by the State Government in which the land had vested under S 167 on Jan 31 1984 While challenging the order of the Addl District Magistrate in Writ Petitions Nos. 12801 and 12802 of 1984 the Samiti and the transferors suppressed the fact that the State Government had already taken possession and obtained an ad interim order from this Court staying their dispossession However a substantial portion of the land covered by the scheme of the Samiti for colonisation had vested in the State Government which had taken possession thereof the State Government could not possibly approve the scheme which had, of necessity to be rejected on this ground Even though the attention of the State Government was drawn to this aspect of the matter through application dt. Jan 18 1985 supported by an affidavit filed on behalf of the Parishad the State Government did not touch this point in the impugned order These facts are contained in paras 17 to 21 of the writ petition The Samiti has met these allegations in paras 42 to 46 of its counter affidavit. It says that the transfers were valid because at the time of the transfers, the transferors had ceased to be members of the scheduled caste and had become Buddhists. The actual possession over the land in question was of the Samiti And, in any case the matter is sub judice before this Court

26 The invalidity of the transfers on this particular ground is yet to be gone into by this Court in Writ Petitions Nos 12801 and 12802 of 1984 which are still pending At this state it would not be appropriate in the present petition to hold in favour of the petitioner Parishad on this ground Moreso when the State Government has chosen not to go into the matter on merits on its view that the appeal filed by the Parishad before the Controlling Authority was barred by limitation and that view of the State Government has been found not to suffer from any apparent error of law

27 In consequence the petition fails and is dismissed but in the circumstances of the case the parties are left to bear their own costs The ad interim order shall stand discharged

Petition dismissed

1986 ALL. L. J 568

H H SETH AND J N DUBEY JJ

Madan Gopal Agrawal Petitioner v The District Magistrate Etah and others Respondents

Civil Misc Writ Petn No 4278 of 1976 D/ 19 12 1985

(A) U P Stamp Rules (1942), Rr 154, 151 — Cancellation of licence of stamp vendor — Permission given by vendor to undesirable elements to sit on his seat — Cannot be a ground for cancellation of his licence

Action against the stamp vendor under R 154 of the Rules could be taken only for some act or omission on his part in discharge of his duties under the U P Stamp Act and Rules framed thereunder Hence when the permission by the vendor to undesirable elements to sit on his seat does not violate any provision of U P Stamp Act, Rules or condition of licence the District Magistrate was held not legally justified in cancelling his licence under R 154 of the Rules on that ground.

(Para 4)

(B) U.P Stamp Rules (1942), R. 154 — Cancellation of licence of stamp vendor on ground of selling of stamps of lower denominations — Proof — Extent of

Where the licence of a stamp vendor was cancelled on the ground of selling of stamps of lower denominations, it was held that before any action could be taken against the vendor for selling of stamps of lower denominations instead of higher denominations it was to be established by the opposite parties that the stamps sold by the vendor to the vendees were to be utilised by each of them for one single instrument For instance according to the opposite parties the petitioner vendor sold two stamps of Rs 75/ each to the vendee who wanted the stamps for a sum of Rs. 150/ Now if the stamps of Rs 150/ were to be utilized by the vendee for one instrument then it could be said that the petitioner should have sold her one stamp of Rs 100/ and one of Rs 50/ but suppose she wanted to utilize the stamps of Rs 150/ for two instruments of Rs 75/ then the petitioner committed no illegality or irregularity in supplying her two stamps of Rs 75/ each (Para 5)

Bharatji Agrawal for Petitioner Standing Counsel for Respondents

ORDER — This writ petition is directed against the order dated 7 9 1976 of the District Magistrate Etah cancelling the petitioner's licence for vend of stamps under R 154 of U P Stamp Rules (hereinafter referred to as the Rules)

2. It appears that the petitioner who has been selling stamps for last several years under the licence granted to him by the District Magistrate Etah under R 151 of the Rules was intimated by the District Stamp Officer vide his letter dated 20-3-1976 that his licence has been suspended by the District Magistrate Subsequently on 3 5-1976 a charge sheet was served upon him The petitioner submitted explanation to the charge sheet on 5 5 1976 stating that none of the charges mentioned in the charge sheet were made out against him He also filed affidavits of several persons to disprove the charges levelled against him On receipt of the explanation of the petitioner the District Stamp Officer sought some clarification from the Tehsildar Kasganj and then submitted his report to the District Magistrate on 6-9-1976 stating that the charges against the petitioner were proved. The District Magistrate accepting the report of the District Stamp Officer cancelled the licence of the petitioner on 7 9 1976 Aggrieved the petitioner has come up to this Court for relief under Art 226 of the Constitution

3. We have heard the learned counsel for the parties and have perused the record

4 The charge sheet served upon the petitioner contained only two charges first charge against the petitioner was that on 25 10-1975 one of the persons sitting on his seat had beaten the brother of a contractor and had thus disturbed the peace while the second charge against him was that instead of selling stamps of higher denominations he sold stamps of lower denominations to three persons on 21st and 29th March 1976 The explanation of the petitioner to charge No 1 was that neither the incident of 25 10-1975 had taken place at his seat nor the person involved in the said incident had any concern with him His explanation to the second charge was that the stamps of higher denominations were not available in the Treasury from 21st to 29th March 1976 and hence he had no option but to sell the stamps of lower denominations in accordance with the instructions contained in the circular issued by the State Government From the materials on record it appears to us that the petitioner had no direct concern with the incident of 25-10-1975 but even assuming that one of the persons involved in the incident had been sitting on his seat prior to the incident no action could legally be taken against him under R 154 of the Rules on this ground The conduct of the petitioner permitting the undesirable elements to sit on his seat may have been amenable to some administrative action by the authority permitting him to occupy the seat but it had no connection with the discharge of his duties in pursuance of the licence issued to him under R 151 of the Rules Action against the petitioner under R 154 of the Rules could be taken only for some act or omission on his part in discharge of his duties under the U P Stamp Act and Rules framed thereunder Since the permission by the petitioner to undesirable elements to sit on his seat does not violate any provision of U P Stamp Act Rules or condition of licence the District Magistrate was not legally justified in cancelling his licence under R 154 of the Rules on that ground

5. Coming to the second charge levelled against the petitioner we find that from the own case of the opposite parties stamps of higher denominations were not available in the Sub-treasury between 21st to 29th March 1976 and therefore the petitioner committed absolutely no illegality or irregularity in selling the stamps of lower denominations to a few persons during that period Moreover unless it was proved that all the stamps sold by the petitioner to the persons concerned during that period were to be utilised by each of them for one single instrument for which there is no material on record, no action could legally be taken against the petitioner under R 154 of the Rules on the ground of his selling stamps of lower denominations instead of higher denominations to a few persons For instance according to the opposite parties the petitioner sold two stamps of Rs 75/ each to Smt Natthi Devi who wanted the stamps for a sum of Rs 150/ Now if the stamps of Rs 150/ were to be utilized by Smt Natthi Devi for one instrument then it could be said that the petitioner should have sold her one stamp of Rs 100/ and one of Rs 50/ but suppose she wanted to utilize the stamps of Rs 150/ for two instruments of Rs 75/ then the petitioner committed no illegality or irregularity in supplying her two stamps of Rs 75/ each Similar will be the position with respect to stamps sold to Manbir Singh etc In other words, before any action could be taken against the petitioner for selling of stamps of lower denominations instead of higher denominations it was to be established by the opposite parties that the stamps sold by the petitioner to Smt Natthi Devi and others between 21st to 29th March 1976 were to be utilised by each of them for one single instrument Since there is no material on record to prove that the stamps sold by the petitioner to Smt. Natthi Devi and others were to be utilized by each of them for one single instrument in our opinion the District Magistrate was not legally justified in taking any action against the petitioner under R 154 of the Rules on this ground as well

6. The petitioner has also challenged the impugned order of the District Magistrate on the ground that it was not a speaking order but in view of our above findings it is not necessary for us to express any opinion on this point.

7 In the result the writ petition succeeds and is allowed with costs and the order dated 7 9 1976 of the District Magistrate Etah is quashed

Petition allowed

1986 ALL L J 570

H N SETH Actg C J AND
N N MITHAL J

M/s Ram Narain Himmat Ram and another Petitioners v Jalaun Kraya Vikraya Sahkari Samiti Ltd and others Respondents

Civil Misc Writ Petn No 3789 of 1976 D 29 11 1985

U P Co-operative Societies Act (11 of 1966), S 95-A(1) — Recovery of claim by Agricultural Co-operative Society — Issuance of recovery certificate by Registrar — Registrar is bound to inform and hear member before issuing recovery certificate

The Registrar is bound to inform the member of the society about the claim made by the society against him and to hear him before issuing any recovery certificate in respect of the claim made by the Agricultural Co operative Society Where this has not been done the recovery certificate cannot be sustained (Para 6)

R C Srivastava and V M Sahai for Petitioners Standing Counsel and H S Nigam for Respondents

H N SETH Actg J — Jalaun Kraya Vikraya Sahkari Samiti Ltd is a Co operative Society registered under the Co operative Societies Act It appears that the petitioners entered into certain transactions with the Co operative Society in the year 1970 The Co operative Society claimed that a sum of Rs 30 000/ was due to it from the petitioners In due course the proceedings for realisation of the said amount together with interest thereon were initiated against the petitioners under a recovery certificate issued by respondent No 2, the Assistant Registrar Co operative Orai under Section 95 A of the Act In pursuance of the recovery certificate issued by the Assistant Registrar the Collector District Jalaun took steps to realise the said amount as arrears of land revenue In that connection the Amin of the Co-operative Department approached the petitioner No 2 calling upon him to pay the said amount

Aggrieved the petitioner has approached this court for relief under Article 226 of the Constitution

2. According to the petitioners, the amount claimed by the Co-operative Society was not due from them In fact as a result of the transaction entered into by them and the Co-operative Society the Co-operative Society was liable to compensate them for the damages suffered by them They also claimed that as the petitioners were not the members of the Co-operative Society the dues could not be recovered from them under the provisions of the Co-operative Societies Act. Further while the dues were sought to be recovered, the petitioner approached the District Magistrate/Collector of the district and informed him that the recovery which was being sought to be made against him was illegal The District Magistrate on 21st August, 1976 made an order requiring the Assistant Registrar to enquire into the matter and thereafter to take steps only for realisation of the correct amount that may be due from the petitioner In spite of this, the respondents are proceeding to press the recovery of the entire amount without holding any enquiry

3 Respondent No 1 i e the Co-operative Society has put in appearance to contest the prayer made in the writ petition According to the respondent, the petitioner was a member of the Co-operative Society which was an agricultural credit society and the provisions of Section 95 A of the Co-operative Societies Act were fully applicable and the recovery proceedings initiated on the basis of the certificate issued by the Assistant Registrar were perfectly legal and in order The respondent, therefore claimed that no case had been made out for interfering with the recovery proceedings in exercise of jurisdiction under Article 226 of the Constitution

4 The averments made in various affidavits bring out that the Assistant Registrar has issued the recovery certificate without informing the petitioner whether he wanted to contest the amount as claimed to be due from him by the Co-operative Society Section 95-A of the Co-operative Societies Act runs thus

95 A Special provision for recovery of certain dues of agricultural society (1) The Registrar may on an application made by the Society referred to in section 34 or an agricultural credit society for the recovery of arrears of any loan advanced by it or any instalment thereof to any member and on its furnishing a statement of accounts in respect of such loan and after making such enquiries if any as he thinks fit, issue a certificate for the recovery of the amount due

(2) A certificate issued by the Registrar under sub-section (1) shall be final and conclusive proof of the dues which shall be recoverable as arrears of land revenue "

5. It is true that under sub-section (1) of Section 95-A after an application has been made to the Registrar for recovery of arrears of loan advanced by the society the Registrar has been given discretion to hold such enquiry into the claim made by the Society as he thinks fit. This provision however does not mean that while issuing recovery certificate the Registrar can give a go-by to the principles of natural justice As and when an application is made to the Registrar to recover any balance or instalments of loan from any debtor the Registrar has to in accordance with the principles of natural justice inform the debtor concerned about the claim made by the society so that the debtor may approach and satisfy him about the following matters

(1) That the debtor is not a member of the Society

(2) That the amount sought to be recovered is not in fact a loan advanced by the Society to him

(3) That the amount of loan has either been wholly or partly paid up

6. It is after the debtor has shown cause that a discretion arises with the Registrar either to depending upon the circumstances of the case hold such enquiry in the matter as he thinks fit and proper In the instant case it is clear that although the petitioners wanted to contest their liability the Registrar issued the recovery certificate to the Collector without affording them any opportunity to place their version before him The respondent persisted in recovering the said amount as arrears of land revenue despite the order made by the Collector on 21 8-1976 requiring the Assistant Registrar to look into the matter before proceeding to recover the amount from the petitioner on the pretext that the said order of the District Magistrate was never brought

to the notice of the Registrar Be that as it may as already explained the Registrar was bound to at least inform the petitioner about the claim made by the society and to hear him before issuing any recovery certificate in respect of the claim made by the Co-operative Society As this has not been done the action of respondent in pressing the recovery certificate cannot be sustained

7 In the result the petition succeeds and is allowed The impugned recovery proceedings are quashed It is, however made clear that the order will not stand in the way of the Registrar to issue fresh recovery certificate against the petitioner after affording them an opportunity to substantiate their version Parties are directed to bear their own costs The amount, if any deposited by the petitioner under the interim order made by this court shall be disposed of in accordance with the ultimate decision regarding issue of fresh recovery certificate that may now be taken by the Registrar

Petition allowed

1986 ALL. L J 572

A N DIKSHITA J

Sheo Murti Gupta, Petitioner v Shri Ghoorey Lal and another Respondents

Civil Misc Writ Petn No 7098 of 1980 D/ 8 10-1985

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 20(4) — Unconditional deposit of rent — Tenant denying ownership of landlord and depositing rent with condition that same should not be given to landlord until he was found owner — Deposit is not unconditional

Where in a suit for eviction and arrears of rent, the tenant while depositing the rent had denied the ownership of landlord and had advanced a condition that rent should be kept in deposit in the court and should not be paid to landlord till he was found to be the owner of the premises it could not be said that the tenant had made an unconditional deposit as contemplated by S 20(4) so as to entitle him to claim benefit of said section

(Para 8)

The intention of deposit under S 20(4) is to protect tenants from unwarranted eviction on the mere premise that the tenant has committed default in payment of rent due to the landlord and to obviate such a hazardous ordeal S 20(4) was enacted but with a clear intention that the tenant should deposit the amount of rent costs of suit etc in the court unconditionally so that it might be paid to the landlord The very intention of deposit under S 20(4) would thus be frustrated if deposit was not made unconditional (1979) 5 All LR 418 Distinguished (Paras 8 9)

Cases Referred Chronological Paras

1981 All LJ 1028 1981 All Rent Cas 632 AIR 1981 SC 1726 9
(1979) 5 All LR 418 9

A N Bhargava for Petitioner Standing Counsel Respondents

ORDER — The petitioner has filed the instant petition under Art 226 of the Constitution of India for quashing by means of certiorari the judgment and order dt 24 5 1980 (Annexure II to the writ petition) passed by District Judge Allahabad

2 In brief the facts are that the petitioner is the owner and landlord of premises No 260/17 Pura Baldi Dydganj Allahabad of which the respondent No 1 was tenant of a portion comprising of a Kothari on a mothly rent of Rs 10/ As the respondent No 1 failed to pay the rent since 1 8 1975 the petitioner sent to him notice dt. 29/31 3-1978 under S 106 of T P Act demanding arrears of rent and also determining the tenancy The notice was served on respondent No 1 on 3-4 1978 but in spite of the service of the notice the respondent No 1 neither paid the rent to the petitioner nor vacated the accommodation in suit Consequently the petitioner filed a suit against the respondent No 1 claiming a decree of ejectment of the respondent No 1 from the portion in his occupation in the suit premises as well as for the recovery of the amount of rent due and damages for illegal use besides the costs of the suit The suit was contested by the respondent No 1 on various grounds

3 The trial court (Judge Small Cause Court Allahabad) decreed the suit vide judgment and order dt 17 11 1979 for the recovery of amount of Rs 350/ being the

rent and also for ejectment of the respondent No 1 from the suit premises besides payment of pendente lite and future damages The trial court further allowed time to the respondent No 1 to vacate and deliver possession of the suit premises within a month to the petitioner failing which he was liable to ejectment through the process of the court

4. Aggrieved by the judgment and order dt 17 11 79 decreeing the suit the respondent No 1 preferred a revision to the court of District Judge, Allahabad respondent No 2 who allowed the same vide judgment and order dt 24-5-1980

5. The instant petition has been filed by the petitioner under Art 226 of the Constitution of India for quashing the judgment and order dt 24-5-80 passed by respondent No 2

6. The controversy in the instant case would lie in a narrow compass as to whether the deposit made by the respondent No 1 in the court would be unconditional so as to entitle him to claim the benefit of S 20(4) U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 The respondent No 2 came to the conclusion that the deposits so made by the respondent No 1 was unconditional and would thus entitle him to the benefit of S 20(4) of the Act

7 Counsel for the parties have been heard

8. Learned counsel for the petitioner has submitted that the respondent No 1 did not deposit the amount unconditionally as enjoined under S 20(4) of the Act and was thus not entitled to claim benefit thereof It has been urged on behalf of the petitioner that respondent No 1 had denied the contract of tenancy between him and the petitioner as the respondent No 1 acknowledges one Mahant Sant Das as his landlord but not the petitioner The trial court on the basis of the evidence produced before it came to the conclusion that respondent No 1 has not made an unconditional deposit of rent as contemplated under S 20(4) of the Act and was thus not entitled to its benefit A perusal of para 15 of the written statement filed by the respondent No 1 would also reveal that he had deposited the rent without prejudice to his right. This by itself would reveal that the deposit made by respondent No 1 was a conditional one It has further been stated in this para of the written statement by respondent No 1 that in the circumstances he being the tenant of the plaintiff (petitioner) is not acceptable to him It was further submitted by respondent No 1 in his statement on oath before the trial court that the petitioner had clearly stated that he has objection to the payment of rent so deposited by him and shall not be given to the petitioner until he is found and held to be the owner of the disputed premises. It is not in dispute that the entire amount of rent, costs of the suit and interest were deposited by respondent No 1 The only point that remains to be considered is whether such deposits would be deemed to be conditional disentitling the respondent No 1 to claim the benefit of S 20(4) of Act XIII of 1972 The respondent No 1 while depositing the rent had denied the ownership of the petitioner and was not amenable to payment of such an amount, deposited by him being made to the petitioner Strings were attached by the respondent No 1 to the payment of the amount deposited by him to the petitioner It would thus be clear that the respondent No 1 had not made an unconditional deposit as contemplated by sub-sec (4) of S 20 of the Act. The very intention of the deposit under S 20(4) of the Act was thus frustrated when it was not made unconditional. The intention of the legislature was to protect tenants from unwarranted eviction on the mere premise that the tenant has committed default in payment of rent due to the landlord and to obviate such a hazardous ordeal sub-sec (4) of S 20 was enacted but with a clear intention that the tenant shall deposit the amount of rent costs of the suits, interest etc in the Court unconditionally so that it may be paid to the landlord Here the respondent No 1 advanced a condition that the rent shall be kept in deposit in the court and shall not be paid to the petitioner till he is found to be the landlord. It is thus clear that respondent No 2 had not deposited the amount unconditionally

9 Learned counsel for the respondent No 1 placed reliance in the case of Smt Inder Kaur v G S Trivedi (1979) 5 All LR 418 but it is of no avail to him In that case the amount was deposited without attaching any precondition except the protest. By merely depositing the rent under protest no condition

is imposed except that the person depositing the rent expressed his unwillingness to accept the case of the adversary It was observed in the case Mangal Sen v Kanchhid Mal 1981 All Ren Cas 632 (1981 All LJ 1028) by the Supreme Court that the unconditional deposit would only mean that it is liable to be paid to the landlord without attaching any condition thereto In the case of a conditional deposit it would mean that till the fulfilment of such condition the amount shall continue in deposit and not liable to be paid to the landlord By mere protest it was held, the amount deposited would not become conditional As discussed above in the instant case the amount was deposited by respondent No 1 with a condition and was thus not entitled to protection of sub-sec (4) of S 20 of the Act. The counsel for the petitioner has successfully distinguished the law as laid down in the case of Smt. Inder Kaur v C S Trivedi, In this case the tenant had deposited the amount unconditionally thereto under protest. Unconditional payment means that the amount can be paid to landlord without any precondition being attached thereto A mere protest is only to decry the case of the adversary but this authority is of no avail to respondent No 1 when he had stubbornly resisted the payment of the amount so deposited by him to the petitioner The respondent No 2 failed to appreciate this aspect of the case and allowed the revision on the basis of the view as laid down in Smt Inder Kaur v C S Trivedi The Supreme Court in the case of Mangal Sen v Kanchhid Mal 1981 All Ren Cas 632 (1981 All LJ 1028) (supra) while examining the controversy held that the provisions of sub-sec (4) of S 20 will get attracted only when the tenant has at the first hearing of the suit unconditionally paid or tendered to the landlord the entire amount of rent and damages for use and occupation of the building due from him together with interest thereon at the rate of nine per cent per annum and the landlord s costs of the suit in respect thereof after deducting therefrom any amount already deposited by him under sub-sec. (1) of S 30 There is ample material on record to show that the alleged deposit was made by way of a conditional tender for payment to the landlord. It is thus clear that the respondent No 1 having not complied with the provisions of S 20(4) of the Act was not entitled to the benefit.

10 In view of the above discussions this petition deserves to be allowed and the findings of the respondent No 2 which are based on erroneous assumption of law deserve to be quashed

11 In the result the petition is allowed with costs The judgment and order allowing the revision dt 24-5-80 passed by the District Judge Allahabad, respondent No 2 are set aside and the judgment and order passed by the learned Judge Small Cause Court Allahabad are restored.

Petition allowed

1986 ALL. L. J 574

N N SHARMA J

Vijai Sharma Mishra, Petitioner v State of U P and others Respondents

Criminal Revn No 1804 of 1981 D/ 7 11 1985

(A) Probation of Offenders Act (20 of 1958), S 4 — Order sentencing accused under three counts to imprisonment as well as fine and also extending him benefit of Act — Order is illegal. Case law discussed (Para 11)

(B) Probation of Offenders Act (20 of 1958), S 4 — Order sentencing accused of imprisonment and fine and postponing sentence for one year provided he kept peace and remained of good behaviour — Further direction in order that if during that period accused was found guilty of any other offence, the aforesaid sentences would operate — Held, Order was illegal being arbitrary (Para 13)

Cases Referred	Chronological	Paras
AIR 1970 Raj 110	1970 Cri LJ 731	10
AIR 1934 Lah 514	36 Cri LJ 682	12
AIR 1934 Lah 582	36 Cri LJ 381	12
AIR 1930 Lah 56	30 Cri LJ 46	12

G S Chaturvedi for Petitioner P K Srivastava and A.G A for Respondents

ORDER — This revision is directed against order dt. 27 7 1981 recorded by Sri G D Dubey I Addl. District Judge Jaunpur who dismissed Criminal appeal No 152 of 1980 and affirmed the order of Sri R. P Verma,

learned IVth Judicial Magistrate Jaunpur di 7 10-1980 in Criminal case No 746 of 1979 by which the revisionist was convicted under Ss 323/504 and 506 IPC The sentence awarded was 15 days Simple Imprisonment and a fine of Rs 50/ under each count However the aforesaid sentences were postponed for one year provided the revisionist kept peace and remained of good behaviour If the revisionist was found guilty of any other offence during this period the aforesaid sentences were to operate The revisionist was ordered to execute a personal bond in the sum of Rs 500/ and furnish one surety bond for a period of one year in the like amount and this was to be released on probation forthwith

2. The prosecution case briefly stated was that on 1 1 1979 at about 8 A.M. the revisionist went to the house of complainant Moosey P W 1 and forcibly carried a kid When complainant objected to it he was abused by the revisionist and assaulted with lathi, fists and kicks It was on intervention of witnesses Ram Ujagir P W 2, and Raj Bhari, P W 3 that revisionist left the kid and went away holding out threats

3. The complainant lodged report Ext Ka 1 at police station Sikrara in the same forenoon at 11 45 A M He could not get himself medically examined on account of poverty and when police did not take any action in the matter he filed the complaint on 4-1 1979 The accused was summoned by the Magistrate after allowing usual procedure of a complaint case

4 Prosecution examined the aforesaid witnesses about the occurrence and one Dashrath P W 4 who proved the F I R.

5. In his statement revisionist denied the aforesaid occurrence and alleged his implication to ill will with one Mog Sharma who got him involved in this case

6 In defence revisionist examined Harinath D W 1 and Bankey Behari, D W 2, who denied the said occurrence and alleged the implication of revisionist to ill will.

7 Learned Magistrate recorded the impugned order which was affirmed in appeal.

8. I have heard Sri G S Chaturvedi learned counsel for the revisionist and Sri P K Srivastava learned A G A

9 On behalf of the revisionist it was pointed out that the bonds have already been furnished by the revisionist. I find the sentences awarded by the learned Magistrate unsustainable A mere look at S 4 of Probation of Offenders Act (Act No 20 of 1958) shall go to disclose that the order recorded by learned Magistrate and affirmed in appeal is wholly illegal and liable to be quashed The learned Magistrate has sentenced the revisionist under three counts to imprisonment as well as fine and has also extended him the benefit of Probation Act

10 Obviously an order under S 4(1) of Probation of Offenders Act cannot be said to be a punishment as was held in State v Jagdish reported in AIR 1979 Raj 110

11 Release on probation is not one of the various kinds of punishments described in S 53 of the Penal Code An accused cannot be punished and at the same time released on his entering into a bond with or without sureties to appear and receive the sentence when called upon and in the meantime to keep the peace and be of good behaviour

Thus the order of learned Magistrate was not in conformity with the said provisions.

12. In Karim Bakhsh v Emperor reported in AIR 1930 Lah 56 the accused was sentenced to pay a fine and was also released on probation under S 562 of Old Code of Cr P C (Act No V of 1898) Such order was struck down as illegal In Mt. Barkat v Emperor reported in AIR 1934 Lah 514 the accused was sentenced to imprisonment as well as benefit of Probation of good conduct under S 562 of the Old Code of Cr P C (Act No V of 1898) was also extended to her Such a release of the convict on probation of good conduct as well as imprisonment was held as beyond the competence of the learned Magistrate In Jamsher v Emperor reported in AIR 1934 Lah 582 the accused was ordered to be released on probation of good conduct under S 562 of the Old Code of Cr P C but imprisonment

was ordered on failure to furnish other security This order was held as illegal

13 It further appears from the order recorded by learned Magistrate that if during that period revisionist was found guilty of any other offence he would expose himself to the sentences awarded by the learned Magistrate Magistrate had no jurisdiction to pass such arrist was found guilty of any other offence he would expose himself to the sentences awarded by the learned Magistrate Magistrate had no jurisdiction to pass such an order He should have passed an order under S 4(1) of the Probation Act He should not have gone out of his way to pass an arbitrary order

14 For the aforesaid reasons the impugned order is unsustainable and quashed herewith Thus the revision is allowed

Revision allowed

1986 ALL. L. J. 576

B L YADAV J

Kunwarpal, Petitioner v Deputy Director of Consolidation, Mathura and others Respondents

Civil Misc Writ Petn No 6823 of 1979 D/ 25 11 1985

U P Consolidation of Holdings Act (5 of 1954), S. 48 — Restoration application in respect of revision — Observation in revisional order that parties were heard — Application allowed merely on ground that in the interest of justice, Authority wanted to hear parties and decide revision afresh and not on ground that observation in revision was incorrect — Held, order of authority was liable to be quashed as arbitrary — Civil P C. (5 of 1908), O 47 R. 1.

Where the revisional Authority while allowing restoration application, on the ground that applicant was not heard in revision set aside the final order in revision passed by his predecessor in office without recording a finding that observation made in order in revision that the parties were heard was incorrect but merely stated that in the interest of justice he wanted to hear the parties and decide the revision afresh order of Authority passed on restoration application would be liable to be quashed as arbitrary

(Para 6)

If a Court or an authority while delivering the judgment makes an observation about the facts that has to be accepted as correct by the appellate Court and in case somebody disputes that the observation was incorrect he should make an application to that very authority or the Court and unless that authority itself agrees that observation was incorrect that observation cannot be said to be without any substance Once a revision has been decided after hearing the parties after serving notices on interested parties that order becomes final and there is no provision for review A restoration application can be filed and that also can be allowed only after recording a finding that the notices were not served on the person aggrieved or that the procedure provided under R 58 for serving notice on applicant was not followed (Paras 4 6)

Cases Referred	Chronological	Paras
1983 All LJ 391		3 5
AIR 1982 SC 1249	1982 Cri LJ 1581	3 5
AIR 1957 SC 882		3 5

R S Dubey for Petitioner Standing Counsel, for Respondents

ORDER — This petition under Article 226 of the Constitution is directed against the order dated 18-8 79 passed by the Deputy Director of Consolidation in purporting to be on the restoration application filed by Jawahar

chak holder 304 respondent No 3 Earlier a number of revisions were filed including revision No 243/19 filed by Parmoli, respondent No 2 and Jawahar respondent No 3 against the petitioners and others Similarly revision No 114/195 was filed by Phul Singh against Jawahar etc and Revision No 58/138 was filed by Ram Khilari against Jawahar respondent No 3 in the present petition. Other revisions were also filed and they were consolidated and heard together by the Deputy Director of Consolidation and the revision was substantially allowed by order dated 18 3-78 In the second part of the order an observation was made that after hearing the parties and after perusing relevant field book and village papers the revisions were being disposed of. The restoration application was filed by Jawahar respondent No 3 just by stating that on the notice his signature was not there and he was not heard The Deputy Director of Consolidation did not record a finding as to whether the notice was actually effected on him or not, or whether he made his signature thereon or not rather allowed the revision just by stating that in the interest of justice he considers it proper to hear the parties again. The said order was passed on 18 8 79 and against this order the present petition has been filed.

2 I have heard Sri R S Dubey learned counsel for the petitioner However in spite of service nobody appears on behalf of the respondents

3 Sri Dubey urged that when the revision was decided by order dated 18-3-78 the parties were heard and an observation to that effect was also made in the order He referred to Nahar Singh v Sub-Divisional Magistrate Meerut, 1983 All LJ 391 State of Maharashtra v Ramdas Srinivas Nayak, AIR 1982 SC 1249 and Union of India v T R Varma, AIR 1957 SC 882 It was further urged that unless a finding was recorded that respondent No 3 Jawahar was not heard or that the notice was not served on him at all, or that he did not engage a counsel, the restoration application cannot be allowed. It has further been stated in para 10 of the writ petition that Chak holder No 304 was heard and that respondents Nos. 2 and 3 engaged one Sri Rama Kant, Advocate In para 12 of the petition it has been stated that Ram Hari was the process server who served the notice on Jawahar respondent No 3 and has obtained his thumb impression and signature In this view of the matter it was urged that there was no justification for recalling the order dated 18-3-1978

4 Having heard the learned counsel for the petitioner I am of the opinion that the contentions raised on behalf of the petitioner cannot be said to be without substance When, the earlier order dated 18-3-78 was passed, an observation was made that the parties have been heard. If a court or an authority while delivering the judgment makes an observation about the facts that has to be accepted as correct by the appellate court and in case somebody disputes that the observation was incorrect, he should make an application to that very authority or the Court and unless that authority itself agrees that the observation was incorrect, that observation cannot be said to be without any substance In the instant case also unless the Deputy Director of Consolidation recorded a finding that the observation made in para 12 of the writ petition that the parties were heard was incorrect, it cannot be assumed that that observation was incorrect

5 Further the Deputy Director of Consolidation while allowing the restoration application did not record a finding that no notice was served on Jawahar respondent No 3 nor the process server was examined by respondent No 3 nor there was any finding recorded that the notice was not effected on Jawahar respondent No 3 nor he was heard at all In paras 10 and 12 of the writ petition it has been stated that respondents Nos 2 and 3 had engaged one Rama Kant as their counsel and that Ram Hari was the process server No counter affidavit has been filed to the writ petition, hence I have to accept the allegations made in paras 10 and 12 of the writ petition that Sri Rama Kant was the counsel representing respondents Nos 2 and 3 and they were heard and that Ram Hari was the process server who had served the notice on Jawahar respondent No 3 The procedure for service of notice has been given in Rule 58(2) provides that at the time of delivering a document or effecting service the signature or thumb impression of the person on whom the notice is effected, shall be obtained and

record of service shall be maintained in C H Form 31 The notice in the instant case was effected on respondents Nos 2 and 3 in view of the procedure prescribed under Rule 58 of the Rules The Deputy Director of Consolidation did not record any finding that the procedure prescribed under Rule 58 was violated I am in respectful agreement with the view expressed in Nahar Singh v Sub-Divisional Officer Meerut (1983 All LJ 391) (supra) State of Maharashtra v Ramdas Srinivas Nayak (AIR 1982 SC 1249) (supra) and Union of India v T R Varma, (AIR 1957 SC 882) (supra) The observations in those cases are to the effect that once an observation has been made in the order that has to be accepted as correct unless an application is filed before that very authority and it records a finding that the observations are incorrect and without any basis In the instant case no such finding has been recorded even by the Deputy Director of Consolidation that the observations made by his predecessor in office that the parties were heard, was incorrect.

6 There is one more important fact to be mentioned that the Deputy Director of Consolidation has stated that in the interest of justice he thinks that the earlier order dated 18-3-78 has to be set aside and the parties may be heard again But no such power has been given to the Dy Director of Consolidation to allow any restoration application or review application at his sweet will without following the procedure prescribed by law Once the revision has been decided after hearing the parties after serving notices on the interested parties that order becomes final under the Act and there is no provision for review At best a restoration application can be filed and that also can be allowed only after recording a finding that the notices were not served on the person aggrieved or that the procedure provided under Rule 58 for serving notice on the tenure holders was not followed Even there appears to be sufficient evidence that Sri Ramakant was engaged as counsel by respondents Nos 2 and 3 hence the Deputy Director of Consolidation was not justified in making the observation that in the interest of justice he wants to hear the parties again. Once the earlier order dated 18-3-78 passed in revision by the Deputy Director of Consolidation has become final, there was no scope for setting aside that order just by making an observation that in the interest of justice he wanted to hear the parties again and to decide the revision afresh This observation of the Deputy Director of Consolidation was arbitrary and was totally uncalled for

7 In view of the facts stated hereinabove the writ petition succeeds and is allowed The impugned order dated 18 8 79 is hereby quashed. As the respondents did not appear there shall be no order as to costs.

Petition allowed

1986 ALL L J 578

(LUCKNOW BENCH)

D N JHA AND K N GOYAL JJ

Smt Teji, Petitioner v Deputy Director of Consolidation Faizabad and others Respondents

Writ Petn No 1206 of 1980 D/ 23-5 1985

(A) U P Consolidation of Holdings Act (5 of 1954), S 48 — Revision — Transfer of consolidation proceedings pending before one settlement officer to another — Order of transfer passed by Deputy Director of Consolidation while deciding revision viz on judicial side held not without jurisdiction. (U P Consolidation of Holdings Rules (1954), R 65(2))

Where an order of transfer of consolidation proceedings pending before one settlement officer to another was passed by the Deputy Director of Consolidation while deciding revision viz on judicial side the order of transfer was held, not without jurisdiction It is true that normally it is the Director or the District Deputy Director of Consolidation who is competent to pass an order transferring the proceedings pending before one officer to another officer In this case however the Deputy Director has not passed an order of transfer on the administrative side but on the Judicial side while deciding the revision When a Deputy Director exercises the power of deciding a revision he is vested with all the powers of the Director If while judicially disposing of the revision, the Director or the Deputy Director considers, rightly or wrongly that the inferior tribunal to whom the case is

to be remanded was biased it is certainly open to the revisional authority to direct that the matter be dealt with after remand by another Officer of coordinate jurisdiction Such a direction is part of the judicial process Thus, even though administratively the Deputy Director could not pass such an order of transfer from one settlement officer to another yet while deciding a revision he could pass an order if he considered it necessary for reasons to be recorded in the judgment This is an inherent power of the superior judicial authority

(Para 6)

(B) U P Consolidation of Holdings Act (5 of 1954), S 5(1)(c) — Consolidation proceedings — Application for permission for transfer of land involved in such proceedings during pendency thereof — Permission cannot be rejected on the ground that controversy with regard to title of such land was pending

(Para 10)

Cases Referred Chronological	Paras
1983 All LJ 349	10
AIR 1981 SC 1683	7
AIR 1971 SC 374 (1970) 3 SCC 573	9
1970 All LJ 520 1970 All WR (HC) 52	7
AIR 1970 Raj 53	7
AIR 1964 Ker 206	7
AIR 1956 SC 87	7

Jagdish Singh, H S Sahai and D K Misra, for Petitioner L P Misra Vijay Krishna Srivastava Abdul Salim Abdul Matin Hargurcharan, S Mirza, Janardan Singh, A N Verma and M. Afzar for Respondents

K N GOYAL, J — This writ petition arises out of consolidation proceedings and came up for hearing before a learned single Judge who has referred certain questions for consideration by larger Bench It is thus that this petition has come up before us

2 The dispute relates to two Khatas, one being Khata No 199 which was originally recorded in the name of Smt. Maktoola widow of Satya Narain, and the other namely Khata No 200 which was recorded in the name of Smt Singari who was widow of a predeceased son of Satya Narain During the pendency of consolidation proceedings Smt. Maktoola died. Thereupon her daughter Smt. Teji and the aforesaid Smt Singari came to be rival applicants for substitution as her legal representatives The case of Smt Teji was that Smt. Singari had remarried, and (as) such she had no claim over either of the two Khatas and that the said Khatas should devolve on Smt. Teji herself. Smt. Singari proposed to sell the entire chak No 213 which was prepared in lieu of the aforesaid Khatas 199 and 200 Under S 5(1) of the U P Consolidation of Holdings Act while consolidation proceedings are pending no land which is the subject matter of those proceedings can be transferred without the permission of the Settlement Officer Consolidation (for short, S O C) Accordingly Smt. Singari made an application on 4-3-78 to the S O C for permission to transfer the land. This application was first given before the chaks were carved out and thereafter a fresh application was given after the chaks were carved out Smt Teji objected to these applications The S O C Tanda held that as the title dispute between Smt. Teji and Smt. Singari was still pending no permission should be granted at that stage He accordingly deferred decision on the application This order is dated 22 4-78 Annexure-1 Smt. Singari filed a revision before the Deputy Director against this order Deputy Director held that the question of permission was to be decided independently of the title dispute Any order passed on the application for permission could not affect the title dispute He accordingly directed that the S O C should consider the matter on merits without being influenced by the pendency of the title dispute He further took the view that as the S O C Tanda had already expressed a certain view it would be desirable that the case be heard by a different S O C He accordingly directed that after remand the case shall be heard by the S O C Akbarpur

3 When the matter came up before the S O C Akbarpur an objection was raised on behalf of Smt. Teji that the Deputy Director had no power to transfer the case from S O C Tanda to S O C Akbarpur The S O C, however took the view that he could not go into the validity of the order of the Deputy Director and as he (S O C) was an inferior Tribunal he was bound to comply with the directions of the Deputy Director and to deal with the case He however granted time to Smt. Teji to obtain stay order if any from a higher Tribunal or court, but in spite of three

dates of hearing given for that purpose no stay order was produced. Accordingly he decided the case and granted permission for sale subject to two conditions namely that the sale may be made if S 168 of U P Act No 1 of 1951 permitted such sale and secondly if Smt Singari lost the title case the permission would be rendered infructuous In pursuance of this order of permission dated 21 8 78 Smt. Singari transferred the chak in favour of opposite parties 3 to 5 some three days later Smt Teji filed a revision against the order of permission before the Deputy Director During the pendency of this revision Smt. Singari died. Smt Teji got her son Chandra Bhan opposite party No 6 substituted as legal representative in place of Smt. Singari. Nothing was said about the fact that Smt. Singari had already executed a sale deed in favour of opposite parties 3 to 5 Chandra Bhan s name having been so substituted both parties namely mother and son, intimated the Deputy Director that Chandra Bhan as legal representative of Smt Singari did not wish to pursue the application for permission to sell the land As such on the basis of the compromise between them the order dated 21 8 78 was set aside and the revision was allowed on 12 2 80 vide order Annexure-4 Opposite parties 3 to 5 later made an application before the Deputy Director contending that they had no knowledge of the revision or of the substitution proceedings and that any order passed on the basis of compromise between mother and son to which they (opposite parties 3 to 5) were not parties could not bind the latter As the order dated 12 2 80 was ex parte in so far as opposite parties 3 to 5 were concerned, they prayed that they may be brought on record and the earlier order dated 12 2 80 be recalled and the revision be decided afresh after hearing them. This application of opposite parties Nos 3 to 5 was allowed on 25 3 80 vide Annexure-5 Thereafter the matter was heard between Smt Teji petitioner and opposite parties 3 to 5 After hearing the parties the Deputy Director dismissed the revision and upheld the order of the S O C This order of the Deputy Director is dated 31 3-80 Annexure-6 It is against the said order of the S O C Akbarpur and the orders dated 25-3-80 and 31 3-80 passed by the Deputy Director that this writ petition was filed.

4 The learned single Judge has referred the following questions to this Bench

1 Whether the Deputy Director of Consolidation while hearing the revision application under S 48 of U P Consolidation of Holdings Act can exercise the powers conferred upon the Director of Consolidation under Rule 65(2) of the U P Consolidation of Holdings Rules 1954 for sending back the case to another Settlement Officer Consolidation before whom neither the case was pending nor was taken cognizance of at any stage?

2 Whether a person who has not moved a substitution application as assignee or transferee was not a party to the case at any stage can file an application for setting aside the order passed on the basis of compromise purporting to be under S 201 of U P Land Revenue Act on the ground that it was an ex parte order?

3 Whether permission to transfer holding can be granted to a person whose rights as a tenure-holder are under jeopardy and the question of title is still pending before the appellate court in respect of a part of holding?

5 We have heard learned counsel for the parties

6 As regards the first point it is not disputed that the power to permit transfer vested under S 5(1)(c) in the S O C The only error pointed out in respect of the order granting permission is that it was the S O C Tanda who was competent to grant permission and not the S O C Akbarpur It is true that normally it is the Director or the District Deputy Director of Consolidation who is competent to pass an order transferring the proceedings pending before one Officer to another Officer In this case however the Deputy Director has not passed an order of transfer on the administrative side but on the judicial side while deciding the revision When a Deputy Director exercises the power of deciding a revision he is vested with all the powers of the Director If, while judicially disposing of the revision the Director or the Deputy Director considers, rightly or wrongly that the inferior Tribunal to whom the case is to be remanded was biased it is certainly open to the revisional authority to direct that the matter be dealt with after remand by another

Officer of co-ordinate jurisdiction Such a direction is part of the judicial process We are therefore of the opinion that even though administratively the Deputy Director could not pass such an order of transfer from one S O C to another S O C yet while deciding a revision he could pass an order if he considered it necessary for reasons to be recorded in the judgment. This is an inherent power of the superior judicial authority

7 That apart, it is well settled that mere want to territorial jurisdiction is not fatal if the authority was otherwise competent to deal with the matter The matter rested within the power of S O C and only the territorial competency of the S O C Akbarpur is being objected to In section 21 C P C Parliament has given effect to this general principle It has also been applied in Merla Ramanna v Nallaparaju (AIR 1956 SC 87) Tarachand v Misrilal, AIR 1970 Raj 53 Konthan Kesavan v Varkey Thomman, AIR 1964 Ker 206 and Kooplan Uneen s Daughter Pathumma v Kooplan Uneen s Son Kuntalan Kutty AIR 1981 SC 1683 The same principle had been applied in Shitla Prasad Deputy Director of Consolidation, 1970 All LJ 520 by another Division Bench of this Court after discussion of various Supreme Court as well as Patna High Court rulings We respectfully agree with the reasoning of that decision It has held the field for about fifteen years now and we do not find any good reason to depart from the same It is true that the facts of that decision are not on all fours with those of the present case but the ratio of the decision is certainly applicable to the instant case We are therefore of the opinion that the S O C Akbarpur cannot be held to have acted without jurisdiction in the matter

8 As regards the second question it is true that the transferees namely opposite parties 3 to 5 were not parties to the revision which was earlier allowed in their absence on 12 2 80 vide Annexure-4 But if this be the objection against their competency to move an application for restoration then it would follow that the said order of the Deputy Director dated 12 2 80 was not binding on them. If the order was not binding on them then the petitioner Smt. Teji cannot derive any benefit out of that order as against these opposite parties We are not concerned with the factual controversy as to whether Smt Teji was aware of the transfer or not, whether these opposite parties were aware of the pendency of the revision or not The fact remains that if they were not parties to the decision the decision could not be binding on them Any compromise with Smt. Singari or with Smt Singari s revers onary heir entered into after the date of transfer by Smt Singari in their favour cannot be binding on them

9 As transferees the opposite parties were necessary parties to the revision, or at any rate proper parties It was therefore open to them to ask for a decision after giving them an opportunity of hearing It has been held by the Hon ble Supreme Court that even a person who is not a party to the decision may be allowed by an appellate court to appeal against that decision if the decision would prejudicially affect his interest, vide Smt Jatan Kerwar Golcha v Golcha Property Ltd (1970) 3 SCC 573 (AIR 1971 SC 374) Extending the same principle of equity and justice we see no reason why the transferees could not ask for the recall of the aforesaid decision dated 12 2 80 which was rendered in their absence and without any opportunity to them and for a fresh decision after due opportunity to them The subsequent fresh decision of the Deputy Director was passed after opportunity to the said transferees and also to Smt Teji the petitioner We are therefore of the opinion that there was no legal error in Deputy Director entertaining the said application of the opposite parties 3 to 5 in this behalf

10 As regards question No 3 it may be pointed out that that grant of permission by S O C under S 5(1)(c) cannot affect the controversy on title By way of analogy we may mention that a permission granted by a Municipal Board or other Prescribed Authority in accordance with the building regulations cannot affect any title dispute It will be unreasonable to hold that merely because of the pendency of such a title dispute the grant of this nature would be indefinitely deferred No legal principle or authority to this effect could be pointed out by the learned counsel for the petitioner On the contrary it has been decided in Lalji v Joint Director of Consolidation (Writ Petn No 3470 of 1981) on 4-5 82 (reported in 1983 All LJ 349) by one of us (K. N Goyal, J) that the pendency of the title dispute does not stand in the way of

granting permission under S 5(1)(c) We endorse the view expressed in that case We therefore see no impediment in the grant of permission merely because of the controversy with regard to title which was pending

11 Accordingly we answer the three questions as follows —

Question No 1 Yes In the alternative even if the Deputy Director did not have this power the order of the S O C would be binding as mere want of territorial competency is not fatal.

Question No 2 Yes.

Question No 3 Yes

12 As we have heard arguments on the merits and have answered the questions as above we have not thought it necessary to go into the plea raised on behalf of the opposite parties 3 to 5 that the petitioner has already lost the battle so far as the title dispute is concerned and on that ground the petition has become infructuous That is a matter which may be raised before the learned single Judge

13 Let the case be now sent back to the learned single Judge with the aforesaid answers

Order accordingly

1986 ALL. L J 582

S K DHAON J

Dakhilal Kushwaha Petitioner v 5th Additional District Judge and others Respondents

Civil Misc Writ Petn No 11615 of 1983 D/ 14-10-1985

Limitation Act (36 of 1963), Arts. 135, 136 — Civil P C (5 of 1908), O 21, R 35 — Decree for delivery of immoveable property in possession of trespasser and for mandatory injunction — Execution of — Proceedings for execution of decree with respect to mandatory injunction barred by limitation — It would not make decree for delivery of possession either infructuous or inexecutable. Case law discussed. (Paras 12, 14)

BD DD A — No BNC SNA

Cases Referred Chronological	Paras
AIR 1981 All 143	12
(1980) F A F O No 38 of 1974 D/ 9 1 1980 (All) Ramautar v Radhey Shyam	13
AIR 1970 All 648	11
AIR 1929 PC 163	7 8
(1872) 18 Suth SR 526(2) (Cal)	10 11
(1866) 6 Suth WR 228	7
(1865) 3 Suth WR 71	7 8

Dr R Dwivedi for Petitioner Standing Counsel for Respondents

ORDER — The petitioner a judgment debtor has invoked the jurisdiction of this Court under Art 226 of the Constitution with a view to get a decision that the execution proceedings are barred by time

2 The University of Allahabad is the decree-holder Its plaint case was that the petitioner had illegally and without any right or title encroached upon some vacant land around and outside the boundary walls of one of its hostels namely Sir P C Banerjee Hostel. It was also the case of the University that the petitioner had made some constructions over the vacant land The petitioner s defence was that the University had no title to the land in dispute He had been in possession over the same for more than 12 years and in the alternative he set up a case of adverse possession

3 The trial court negatived the pleas of the petitioner and held that the University had the title to the land in dispute It, therefore decreed the suit The petitioner lost in appeal before the First Appellate Court and his second appeal too was dismissed by this court The operative portion of the order of the trial court was —

This suit is decreed for demolition and possession in respect of the land in suit shown by letters A B C D and K M on the plaint map 82A with proportionate costs The defendant is herewith directed to remove the construction from the land. A.B C D and K.M within 15 days and deliver possession of land to the plaintiff failing which the plaintiff shall be entitled to get the same done through court at the cost and risk of defendant The suit stands dismissed in other respects paper No 96A, that is the plaint map shall form part of decree

4 The second appeal was dismissed on 5th May 1970 and an execution application was given by and on behalf of the University on 31st July 1972 which was dismissed in default on 27th July 1975 No steps were taken for the revival of this application Another application for execution of the decree was made on 28th April, 1978 The Executing Court upheld the objection preferred by the petitioner under S 47 of the Code of Civil Procedure (hereinafter referred to as the Code) and rejected the application as barred by time The IVth Additional District Judge (hereinafter referred to as the Revisional Court) on 2nd September 1983 set aside the order of the Executing Court and held the execution application within time The order of the Revisional Court is being impugned in this court

5 The petitioner's case is that in substance the University has made an application for the enforcement of a decree granting a mandatory injunction and, therefore the application for execution made on 28th April, 1978 is patently barred by time as envisaged in Art. 135 of the Limitation Act, 1963 (hereinafter referred to as the Act) The view taken by the revisional court is that the decree passed by the trial court is in two parts The first part concerning the demolition of the constructions may have become inexecutable but the second part regarding the delivery of possession is still executable in view of Art 136 of the Act

6. The petitioner has been found to be a traspasser He made a wrongful and unwarranted entry upon the land of the University He did not acquire any juridical or juristic possession of the property Such a possession did not create in the petitioner any interest which the law could recognise The University therefore maintained an action of ejectment against the petitioner It could, upon proof of title oust the petitioners and recover possession It succeeded in proving its title and therefore a decree for the recovery of possession has been passed in its favour

7 The English law as comprised in the maxim quicquid plantatur solo solo cedit (whatever is affixed to the soil belongs thereto) is not applicable to this country Had it not been so the petitioner could not lay any claim on the superstructures raised by him over the land in dispute In Vallabdas Naraim) v Development Officer Bandra AIR 1929 PC 163 the Judicial Committee quoted with approval the judgment given by Barnes Peacock C J in Thakoor Chunder Poramanick v Ramdhone Bhuttacharjee (1866) 6 Suth WR 228 In that case the learned Judge took the view that there was nothing in the laws and customs of this country to indicate the existence of an absolute rule of law that whatever is affixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself The learned Judge in Thakoor Chunder's case added that according to the usages and customs of this country buildings and other such improvements made on land do not by the accident of their attachment to the soil become the property of the owner of the soil According to the learned Judge it was a general rule that, if he who makes the improvement is not a mere trespasser but is in possession under any bona fide title or claim of title he is entitled either to remove the materials restoring the land to the state in which it was before the improvement was made or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil The Judicial Committee posed the question as to what is meant by "mere trespasser" as contradistinguishable from possession under any bona fide title or claim of title Their Lordships of the Judicial Committee answered this question by quoting from a decision in Gobind Poramanick v Gooroo Churn Dutt (1865) 3 Suth WR 71 According to their Lordships the learned Judge in the aforementioned case stated the law as follows —

But in the present case we have a trespasser who has tortiously entered upon the land of another and built a house thereon Without going so far as to say under no circumstances could acquiescence by the party injured in the act of the injury done be inferred we are clearly of opinion that no such acquiescence was either pleaded or proved in the present case We therefore think the plaintiff is clearly entitled as against the defendant, a trespasser to possession of his land, leaving the defendant at liberty to remove the bricks of his house

8 The University has been granted the

relief of the delivery of possession of the land as well as of mandatory injunction The land belongs to the University Upon it the petitioner has raised structures and, therefore the University is entitled to stand upon its strict rights The Court has no discretion to refuse the relief for delivery of possession as it has in the case of the relief of mandatory injunction From the statement of the law in Govind Paramanik s case (1865 3 Suth WR 71) (supra) as approved by the Privy Council in Vallabdas s case (AIR 1929 PC 163) (supra) coupled with the legal position that as against a trespasser a plaintiff is entitled to enforce his right of taking back the possession and the court has no discretion to refuse such a relief it is apparent that the University could have instituted a suit for possession of land without seeking any relief of a mandatory injunction The Court could not insist that the relief of mandatory injunction should have also been claimed The decree for possession of land could be executed Of course the petitioner would have been permitted to remove the super structures

9 Order XXI R 35 of the Code provides for the execution of a decree with respect to the immoveable property Sub-rule (1) of the said provision provides that where a decree is for delivery of any immoveable property possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf and if necessary by removing any person bound by the decree who refuses to vacate the property We are concerned with the execution of a decree for the delivery of immoveable property in the possession of a trespasser There is nothing in sub rule (1) to prevent the execution of the decree for the delivery of possession of the land in dispute to the University

10 In Radha Gobind Shaha v Brijendra Coomar Roy Chowdhari (1872) 18 Suth WR 526(2) (Cal) demolition of the constructions made before the institution of the suit, was not ordered but it was said that it was a matter for the decree-holder to consider after he had obtained possession At the same time the judgment debtor was allowed two months time within which he could if he so desired, vacate the land and carry away the materials of the building

11 In Mohd Ismail v Ashiq Hussain AIR 1970 All 648 this Court held that where it appears to the executing court that the costs of removal or demolition of the constructions would exceed the costs of material to be fetched after the demolition and the decree holder is willing to let the construction stand on the land the rule laid down in (1872) 18 Suth WR 526(2) (Cal) (supra) can be adopted namely that it can be left open to the decree-holder to decide what he shall do with the constructions after he is given actual possession of the land along with the constructions standing thereon Thereby the judgment debtor would not be put to any additional expenses But if costs of demolition shall not exceed the costs of the materials and the judgment debtor is willing to release the materials in favour of the decree-holder free of charge and the decree-holder is willing to accept the constructions the executing court need not direct the demolition of the constructions the ownership of which would automatically pass to the decree-holder

12 Learned counsel for the petitioner has contended that the failure of the University to execute the decree for mandatory injunction within the time specified in Art 135 of the Act has rendered the whole decree inexecutable According to him even the decree for the delivery of possession of the land cannot be executed even though Art 136 prescribes a period of 12 years for the execution of such a decree He submits that the law laid down by this Court in Manwa v Maulana Abdul Mughani AIR 1981 All 143 that in a situation where a decree for the delivery of possession and mandatory injunction are passed in a suit, the former decree is executable within the period prescribed by Art 136 and the latter decree is executable within the period prescribed by Art 135 does not lay down a good law He further contends that the learned single Judge while deciding this case has not given any reasons in support of his conclusion It will be noticed that it is not clear from a reading of the said decision whether the defendant there was a trespasser Confining myself to the case of a trespasser I respectfully agree with the conclusion of the learned Judge

13 In First Appeal from Order No 38 of 1974 Ramautar v Radhey Shyam (decided

on 9th January 1980) a suit for a mandatory injunction directing the defendants to remove the constructions erected by them on a certain land and also a relief of a prohibitory injunction restraining the defendants from interfering with the plaintiff's right to use the land as a passage was instituted. The suit was decreed and a mandatory injunction was issued directing the defendants to remove the constructions from the land in dispute within 40 days of the decree. It was also ordered that in case the defendants failed to do so the decree-holder would get the constructions removed through Court on the expenses of the judgment debtors. This Court held that under Art 135 of the Act the period of limitation for filing an application for execution in respect of mandatory injunction is three years from the date of the issue of the mandatory injunction (plus 40 days). There can be no quarrel with this proposition. This was not a case where a relief for the delivery of possession had been granted under the same decree. In this case it has not been held that decree for the delivery of possession against a trespasser would become inexecutable if a decree for mandatory injunction has not been executed within the time prescribed. This case is not apposite.

14 To sum up the decree for the delivery of possession in favour of the University has not become either infructuous or inexecutable merely because the proceedings for the execution of the decree with respect to the mandatory injunction are barred by limitation (Article 135).

15 Affidavits have been exchanged between the parties. Though the writ petition was not formally admitted yet with the consent of the parties I heard the same on the footing that the same will be disposed of finally.

16 This petition lacks merit. It is dismissed. However there shall be no order as to costs.

Petition dismissed.

1986 ALL L J 585

K C AGRAWAL AND
UMESH CHANDRA, JJ

M/s. Mohanlal Hargovind Dass and another Petitioners v State of U P Lucknow and others Respondents

Civil Misc Writ Petn No 10 of 1980 Connected with Review Application in Writ Petns Nos 5316 of 1972 3083 2884 3562 3679 3964 4166 and 4167 of 1973 D/ 6-11 1985

(A) U P Tendu Patta (Vyapar Vaniyaman) Adhiniyam (19 of 1972), S 5(3) (as amended by Act 5 of 1980) — Constitution of India, Arts. 19(1)(g) and 19(6) — Creation of monopoly under Act is valid — Section 5(3) is not incidental to creation of monopoly — It does not get protection of Art 19(6)

Monopoly in trade of tendu leaves has been created by S 5 of the Act Article 19(6) of the Constitution as amended by the Constitution (First Amendment) Act, 1951 inter alia lays down that nothing in CL (g) of Art. 19 (1) shall prevent the State Government from making any law relating to the carrying on by the State of any trade business or industry whether to the exclusion complete or partial, of citizens or otherwise. This provision further precludes the Court from questioning the reasonableness of a law which creates a monopoly in favour of the State itself to carry on the trade to the exclusion of the citizens. By Art 19(6) of the Constitution (as amended by First Amendment Act 1951) what cannot be challenged is the reasonableness of the provision providing for the State monopoly. But the said provision will not afford protection to other provisions made by the Act, which are not incidental or helpful to the operation of the monopoly. Consequently Art. 19(6) does not justify sub-section (3) of S 5 of the Act. This provision is separate and distinct from those which provide for the State monopoly.

(Paras 13 38)

(B) Constitution of India, Arts. 199-200 and 212 — U P Tendu Patta (Vyapar Vaniyaman) (Sanshodhan) Adhiniyam (5 of 1980), S 5 — U P Act is not invalid on ground that it was in breach of Art. 199(4) — Vacancy

---

AD/DD/A408/86/MVJ

occurring in office of speakership by his resignation — Deputy Speaker performing his duties certifying under Art. 199(4) that it was money bill — Held, that Act was validly passed.

(Para 24)

(C) Constitution of India, Arts. 304(b), 301 and 255 — U P Tendu Patta (Vyapar Vinyaman) (Sanshodhan) Adhiniyam (5 of 1980), S 5 — Sale of Tendu leaves — Restrictions — Previous assent of President not obtained for introducing Bill — President s assent obtained subsequently — Provision of S 5 of Act cannot be held to be ultra vires.

(Para 29)

(D) Constitution of India, Art. 265, Sch. 7, List 2, Item 56 — U P Tendu Patta (Vyapar Vinyaman) Adhiniyam (19 of 1972), S 5(3) (as amended by Act 5 of 1980) — Transport of tendu leaves — Levy of tax on persons to whom permits were granted — Levy is illegal

Sub-section (3) of S 5 and S 4 of the Validating Act (1979) are beyond legislative competence of State legislature

(Paras 42 45)

Entry 56 authorises a tax the incidence of which is on goods and passengers (carried by roads or inland water ways) even though the tax is measured by the fares, or by the distance travelled Under this Entry no tax can be imposed on the permits under which a person may be authorised to export or transport goods The tax in the instant case is not on goods, but on permits The levy was on the permits given under the Tendu Patta Adhiniyam, 1979 for transport outside the State This has nothing to do with the carrying of goods by road or inland water ways Sub-sec (3) of Sec 5 in fact, does not confine itself to the tendu patta which are to be carried by roads or inland water ways Irrespective of the conveyance which are to be utilized in carrying or transporting tendu pattas, that tax @ rupees three per standard bag is leviable Consequently the legislation, on the basis of Entry 56 cannot be justified. Entry 56 is meant for the purposes different than that for which sub-section (3) of Section 5 had been enacted. Taxation, in order to be valid, must have been enacted by a legislature which is competent to do so If, therefore under List II, a tax imposed by the State Legislature is not covered, the imposition of that tax would be beyond legislative competence of the legislature imposing the same (Paras 31 33)

Cases Referred	Chronological	Paras
AIR 1981 SC 774	1981 Tax LR 289	31
AIR 1976 SC 182	1976 Tax LR 1293	28
AIR 1975 SC 17	1975 Tax LR 1208	31
AIR 1970 SC 1292		43
AIR 1969 SC 903		22 24
AIR 1966 SC 764		28
AIR 1966 Madh Pra 301		15
AIR 1963 SC 589		28
AIR 1963 SC 1047		14 39
AIR 1962 SC 1406		31
AIR 1961 SC 82		14
AIR 1961 SC 232	(1961) 1 SCR 809	26 31 32
AIR 1961 SC 552		40

B C Dey and Govind Krishna for Petitioners Standing Counsel for Respondents

K C AGRAWAL, J — This writ petition has been filed by M/s Mohan Lal Hargovind Dass Tobacco Products Private Limited Bai Ka Bagh, Allahabad for a writ of certiorari quashing the provisions of The Uttar Pradesh Tendu Patta (Vyapar Vinyaman) (Sanshodhan) Adhiniyam, 1980 (U P Act No 5 of 1980) (hereinafter referred to as the Act) and for a mandamus directing the respondents not to realise tax on the tendu bags which are exported by it from Uttar Pradesh to Madhya Pradesh or vice versa

2 In 1972 U P Tendu Patta (Vyapar Vinyaman) Adhiniyam, 1972 (U P Act No 19 of 1972) was enacted to provide in the public interest for the creation of State monopoly in the purchase and distribution of tendu leaves and for matters connected therewith Sub-section (3) of Sec 1 of the Act provides that it shall come into force in such area or areas and on such date or dates as the State Government may by notification in the gazette appoint and different dates may be appointed for different areas of Uttar Pradesh Section 5 places restrictions on sale purchase and transport of tendu leaves The material provision of this section is quoted below —

"On and after the appointed day —

(a) no person shall sell tendu leaves to any person other than the State Government or an officer of the State Government authorised

by it in that behalf or an agent in respect of the unit in which the leaves have grown

(b) no person other than such Government, officer or agent shall purchase tendu leaves from any person other than such Government, Officer or agent, or collect tendu leaves grown on any land of which he is not owner or tenure-holder

(c) no person other than such Government, officer or agent shall transport tendu leaves except in the following cases namely —

(i) to (iii)

Section 18 of the Act confers power on the State Government to make Rules for carrying out the purposes of the Act Clause (d) of sub-sec (2) of Section 18 of the Act, as it originally stood conferred power on the State Government to make Rules laying down the manner in which and the conditions subject to which permits (for transport of tendu leaves) could be issued under Sec 5 Sec 21 of the aforesaid Act repealed the U P Tendu Patta (Vyapar Vinyaman) Adhyadesh 1972

3 As a result of the provisions of the aforesaid Act, State monopoly in the sale purchase and transport of tendu leaves had been created and accordingly no cutting collection, sale purchase storage transport and use of tendu leaves grown within the State could be made except under the provisions and in accordance with them

4 In 1973 the State Legislature passed the U P Tendu Patta (Vyapar Vinyaman) (Sanshodhan) Adhiniyam, 1973 (U P Act No 6 of 1973) This Act amended Sec 5 of the original Act by providing that the State Government or any officer of the State Government authorised by it in that behalf may on such terms and conditions and in such manner as may be prescribed —

(a)

(b) Permit any person referred to in sub-cl. (iii) of Cl (c) of sub-sec (1) to sell within Uttar Pradesh any tendu leaves which he has been unable to utilise in the manufacture of bidis within Uttar Pradesh or as the case may be to export outside Uttar Pradesh or

(c) permit any person, who has purchased any tendu leaves outside Uttar Pradesh to bring them inside the State either for manufacture of bidis within the State or for transporting them elsewhere outside Uttar Pradesh or

(d) Permit any person, who has purchased any tendu leaves within Uttar Pradesh outside any area to which this Act applies to transport them to any area to which this Act applies for the manufacture of bidis"

Sub-section (3) of Sec 4 of the Amending Act which also amended Sec 5 of the original Act, is material for our purpose This reads as follows —

(3) A person to whom a permit referred to in sub-cl. (iii) of clause (c) of sub-sec (1) or in sub-sec (2) is granted shall be liable to payment of such fee as may be prescribed

5 Further Sec 6 of this Act amended Sec 18 of the principal Act entitling the State Government to impose fees payable for permits under which the tendu leaves could be transported outside Uttar Pradesh and brought inside Section 5 of the Act, amended by U P Act No 6 of 1973 was given retrospective effect. Rule 4 of the Rules framed under the Amending Act provide for the issue of transport permits in prescribed forms, and that the transport permits shall be subject to the conditions mentioned in that Rule Rule 4 as originally enacted, did not contemplate the levy of any fee for the grant of the permits It was subsequently when the Rules were amended by the U P Tendu Patta (Vyapar Vinyaman) (Dwitiya Sanshodhan) Niyamavali, 1973 that a fee of rupees three per standard bag tendu leaves became payable by the person applying for issue of permit in Forms TP 5 and TP 6 No fee was payable for other types of permits

6 Validity of R 4(2) of the Rules levying the fee at the rate of rupees three per bag was challenged in this court, in Writ Petition No 3083 of 1973 and other connected Writ Petitions These petitions were allowed on Aug 29 1979 The Division Bench held that as no service was being rendered levy of fee was unjustified. On this findings the Bench restrained the respondents from imposing a fee of rupees three per bag as contemplated by R. 4(2) of the Rules It further directed the State Government to refund the amount of

fee which had been paid during the pendency of the writ petition within a month of the giving of the judgment After the aforesaid judgment of this Court, the Governor under Art 213 of the Constitution promulgated the U P Tendu Patta (Vyapar Viniyaman) (Sanshodhan) Adhyadesh, 1979 Sub-section (3) of the Adhyadesh is as under —

(3) A person to whom a permit referred to in Cl (b) or Cl (c) or Cl (d) of sub-sec (2) is granted shall be liable to pay in the manner prescribed a tax at the rate of three rupees per standard bag of tendu leaves

It further provided that fee for permits which had been levied or collected or purported to have been levied or collected under the principal Act, Rules or Notification shall be deemed to have been validly levied or collected as tax in accordance with law under the principal Act as amended by this Ordinance as if the provisions of this Ordinance were in force at all material times Section 5 of the Ordinance further entitled any person aggrieved by any judgment, order or direction made by any court or authority to apply for review within three months from the date of the commencement of the Ordinance It laid down that on review application being made to such Court for whose review of the judgment the application was filed, shall pass appropriate orders in accordance with the principal Act as amended by this Ordinance

7 In pursuance of the Ordinance the State of U P applied for review in Writ Petition No 3083 of 1973 M/s. Mohan Lal Hargovind Dass v State of U P and others on 29 10-1979 Notice was issued on this review application on 17 12 1979 This Ordinance was repealed by the U P Tendu Patta (Vyapar Viniyaman) (Sanshodhan) Adhiniyam, 1980 (U P Act No 5 of 1980)

8 Statement of Objects and Reasons of the aforesaid Act No 5 of 1980 mentioned that as it was considered necessary to amend the U P Act No 19 of 1972 with a view to provide (with retrospective effect) that the permit holders should be liable to pay a tax at the aforesaid rate so that the amount levied and collected as fee may be deemed to have been levied and collected as tax it was amended as such. Relevant provisions of this U P Act No 5 of 1980 having a bearing on the controversy in hand, are found in Secs 4 and 5 of the Amending Act Section 4 of Amending Act deals with validation whereas section 5 with Repeal and Savings

9 Challenging the validity of the U P Act No 5 of 1980 the present writ petition was filed

10 This writ petition has been contested by the State of U P We will take up the points in the seriatim in which they are argued before us

11 The first argument of the petitioner s learned counsel was that U P Act No 5 of 1980 does not validate the levy of fee which was collected under R 4(2) of the Niyamavali of 1973 and as such the petitioner is entitled to the refund of the amount paid as fee in accordance with the direction given by this Court in Writ Petition No 3083 of 1973 It was further urged in connection with this submission that the provisions of U P Act No 5 of 1980 being not the same as they were of the Ordinance repealing the Uttar Pradesh Tendu Patta (Vyapar Viniyaman) (Sanshodhan) Adhyadesh 1979 (U P Ordinance No 29 of 1979) therefore on the Ordinance having been repealed the review application in Writ Petition No 3083 of 1973 has become infructuous and is liable to be rejected

12 For a proper appreciation of the arguments made before us we consider it necessary to point out that U P Act No 19 of 1972 had been passed with a view to provide for the creation of State monopoly in the purchase and distribution of tendu leaves A bare perusal of the provisions contained in the aforesaid Act would show that every grower was obliged to sell tendu leaves to the State Government on the price which had to be fixed by the State Government No person was entitled to sell tendu leaves to any person other than the State Government and further that no person other than the State could purchase tendu leaves from any person other than such Government Prohibition was imposed on the right of transportation of tendu leaves It was obvious that a restriction on the transport of tendu leaves even before or after the sale of leaves by the Government was an essential part of the creation of monopoly All the tendu leaves grown in the area had to be

sold to the State Government, so that no person could surreptitiously transport tendu leaves to outside The restriction on transportation was also imposed for the purpose of putting a check on the cutting of tendu leaves from the State forests

13 As a result of the aforesaid provisions it would be seen that monopoly had been created by Sec 5 of U P Act No 19 of 1972 Article 19(6) of the Constitution as amended by the Constitution (First Amendment) Act, 1951 inter alia lays down that nothing in Cl. (g) of Art 19(1) shall prevent the State Government from making any law relating to the carrying on by the State of any trade business or industry whether to the exclusion complete or partial, of citizens or otherwise This provision further precludes the Court from questioning the reasonableness of a law which creates a monopoly in favour of the State itself to carry on the trade to the exclusion of the citizens

14 In Akadasi v State of Orissa, AIR 1963 SC 1047 the Supreme Court rejected the contention that the creation of the State monopoly was a part (Sic) to be justified by the State by showing that the restrictions imposed by it are reasonable and are in the interest of general public As a result of the First Amendment of 1951 there are no limitations upon the power of the State Government to create a monopoly in its favour The law can provide for the exclusion from a service of all citizens or some of them only It was held by the Supreme Court in Kondala Rao v A P S R T C AIR 1961 SC 82 that the State is competent to enter into any trade or business like a private individual even without a specific legislation sanctioning such activity inasmuch as Art 298 of the Constitution, as inserted in the Const tution in 1956 included the right to carrying on trade or business in the executive power in the Union or State

15 In Vrajlal Manilal & Company v State AIR 1966 Madh Pra 301 the validity of Madhya Pradesh Tendu Patta (Vyapar Vinyaman) Adhyadesh was challenged on the ground that it infringed Art. 19(1)(f) of the Constitution The Division Bench in that case repelled the contention by ruling that S 5(1) of M P Act being a provision creating a monopoly in favour of the State in the trade of tobacco leaves was completely protected by the latter part of Art. 19(6) of the Constitution as amended by the First Amendment Act 1951

16 The contention of the learned counsel for the petitioner was that Act No 5 of 1980 does not provide for the validation of the levy of fee which had been invalidated by the High Court in Writ Petition No 3083 of 1973 We are unable to accept this submission Section 4 of U P Act No 5 of 1980 provides that notwithstanding any judgment or order of any court to the contrary the realisation of fee would be deemed to have been done or taken under the principal Act, as amended by this Act The intention behind section 4 of this Act, if it is read with Statement of Objects and Reasons there would be no doubt that U P Act No 19 of 1972 was amended with a view to provide (with retrospective effect) that the permit holders shall be liable to pay tax at the aforesaid rate so that the amount levied and collected as fee may be deemed to have been levied or collected as tax It is not in dispute that the power to legislate includes the power to legislate retrospectively as well as prospectively and in that behalf tax legislation has no difference from any other legislation.

17 We have seen above that a provision for filing of the review of the judgment, given by the High Court was made by U P Ordinance No 21 of 1979 This Ordinance has come into force on 28th September 1979 Subsequently when the Ordinance was repealed, sub-sec (2) of Sec 1 of U P Act No 5 of 1980 provided that the Act shall be deemed to have come into force on Sept 28 1979 As a result of U P Act No 5 of 1980 coming into force w e f 28th Sept 1979 no time lag was left. To meet the requirement of a provision, which provided for the decision of the review application filed earlier under the Ordinance Sec 5 of U P Act No 5 of 1980 lays down that every application for review filed under Sec 5 of the Adhyadesh and pending on the date of publication of this Act, shall be disposed of in accordance with the said section as if the said Adhyadesh continued to be in force It is therefore not correct to argue that as a result of repeal of the Adhyadesh review application filed under Sec 5 of the same elapsed Clause (b) of Sec 5 of U P Act No 5 of 1980 further has

provided that anything done or any action taken under the provisions of the principal Act as amended by the said Adhyadesh, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act, as if the provisions of this Act were in force at all material times Consequently we are unable to find any substance in the submission of the learned counsel for the petitioner that neither did Ordinance No 21 of 1979 nor does U P Act No 5 of 1980 purported to cure the defect, which had been found by this Court in Writ Petition No 3083 of 1973 While dealing with this argument, we should not be taken to have upheld that the State Legislature was competent to impose tax by U P Act No 5 of 1980 This aspect of the matter would be dealt with by us separately

18 The next submission of the learned counsel for the petitioner was that the Bill which resulted in passing U P Act No 5 of 1980 was not presented to the Governor for assent under Art. 200 of the Constitution, with the certificate of the Speaker of the Legislative Assembly signed by him that it was a Money Bill, therefore the non compliance of this mandatory provision rendered the imposition of tax as invalid

19 The definition of Money Bills has been given in Art. 199 of the Constitution Article 199(4) to which the argument of the learned counsel for the petitioner was centered, reads as under —

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under Art 198 and when it is presented to the Governor for assent under Art 200 the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill

The submission of the petitioner s learned counsel was that the certificate of the Speaker of the Legislative Assembly signed by him, was a necessary condition for obtaining the assent of the Governor under Art. 200 and as this was not done the imposition of tax by U P Act No 5 of 1980 was in contravention of the mandatory provision

20 On behalf of the State Government, counter-affidavits have been filed, stating that a compliance of Art. 199 was made In para 3 of the supplementary counter affidavit of Lalit Mohan Tripathi who was posted as Deputy Secretary U P Vidhan Sabha it was stated that as Sri Banarasi Das who was then the Speaker of U P Legislative Assembly resigned from the Speakership on the Twentysixth of Feb 1979 the office of the Speaker fell vacant, with the result that Jagannath Prasad, the then Deputy Speaker performed the duties of the office of the Speaker till 17th Feb 1980 as per the Notification No 460/49 (San) 80 dated 18th Feb 1980 published in the U P Extraordinary Gazette Dated 18th February 1980 As Sri Jagannath Prasad the Deputy Speaker was performing the duties of the office of the Speaker he certified that Bill of U P Act No 5 of 1980 passed by the U P Legislative Assembly on 6th Feb 1980 was a Money Bill The Bill was presented to the Governor for his assent under Art 200 of the Constitution with the certificate of the Deputy Speaker dated 15th February 1980 This Money Bill was reserved by the Governor and forwarded it to the President of India for his assent, who accorded the same on March 4 1980 It was therefore that the U P Tendu Patta (Vyapar Vinivaman) (Sanshodhan) Adhiniyam came into force and was published in the U P Gazette dated 5th March 1980

21 From the facts stated above it is clear that a vacancy had occurred on account of resignation submitted by the Speaker in Feb 1979 As the Speaker was not available the Deputy Speaker performed his duties In that capacity he gave the certificate as was required by Art 199(4) of the Constitution With this certificate the bill was presented to the Governor for assent We are on this fact satisfied that there was no breach of Art. 199(4) of the Constitution hence it is not possible to hold that U P Act No. 5 of 1980 is invalid on the ground suggested by the learned counsel for the petitioner

22 In State of Punjab v Satyapal, AIR 1969 SC 903 the Supreme Court was called upon to deal with the legal position which would emerge in the absence of the Speaker It observed —

Wherein the absence of the Speaker at the time of the passing of the Money Bills the Deputy Speaker acts as the Speaker under Art 180(2) he can effectively certify the Money Bills under Art 199(4) though

Art 199(4) mentions only the Speaker of the Legislative Assembly

23 The view of the Supreme Court was that the provisions of Art 199(4) could not be considered as mandatory but as directory Giving reasons for holding it to be directory the Supreme Court observed —

If the Constitution saw the necessity of providing a Deputy Speaker to act as the Speaker during the latter s absence or to perform office of the Speaker when the office of the Speaker is vacant, it stands to reason that the Constitution could never have reposed a power of mere certification absolutely in the Speaker and the Speaker alone

24 In fact according to the view of the Supreme Court taken in this case even if there was some irregularity in the following of the procedure Art 212(1) which provides that the validity of any proceeding in the Legislature of a State shall not be called in question on the ground of any alleged irregularity or procedure would come into effect Sri Jagdish Swarup attempted to argue that the matter relating to non-compliance of Art 199(4) was not a procedure We are not able to sustain the submission State of Punjab v Satyapal (AIR 1969 SC 903) (supra) was also a case of non-compliance of Article 199(4) of the Constitution Moreover the heading under which Article 199 is to be found in the Constitution is Legislative Procedure That being so we cannot uphold the submission of the petitioner s learned counsel In our view when the Deputy Speaker acts as the Speaker during the absence of the Speaker he can exercise the power to certify a Bill as Money Bill under Art 199(4)

25. The next submission of the petitioner s learned counsel was about Article 301 of the Constitution. He urged that Art. 301 of the Constitution guarantees a right of trade commerce and intercourse throughout the territory of India and as the tax imposed by Sec 5 of U P Act No 19 of 1972 as amended by U P Act No 5 of 1980 would impede the said right, Sec 5 is liable to be struck down on that ground.

26 The main object of Art. 301 is to allow free flow of the stream of trade commerce and intercourse throughout the territory of India. The object of the freedom declared by this Article is to ensure that the economic unity of India cannot be broken up by internal barriers See Atiabari Tea Company v State of Assam (1961) 1 SCR 809 (AIR 1961 SC 232) This Article is fully subject to Arts 302 303 and 304 of the Constitution We are since concerned, in this case only with Art 304 it is not necessary for us to deal with other Articles Article 304 reads as follows —

304 Notwithstanding anything in Art. 301 or Art. 303 the Legislature of a State may by Law —

(a) impose on goods imported from other State or the Union Territories any tax to which similar goods manufactured or produced in that State are subject, so however as not to discriminate between goods so imported and goods so manufactured or produced and

(b) impose such reasonable restrictions on the freedom of trade commerce or intercourse with or within that State as may be required in the public interest

The effect of Art 304(a) is to treat imported goods on the same basis as goods manufactured or produced in any State So far as Art. 304(6) is concerned it empowers the State Legislature to impose reasonable restrictions on the freedom of trade with other States or within its own territory A Bill imposing such a restriction can be introduced in the State Legislature only with the previous sanction of the President The idea of obtaining previous sanction is not far to seek This has been elaborately dealt with by the Supreme Court in Atiabari Tea Company v State of Assam (AIR 1961 SC 232) (supra)

27 Admittedly in this case no previous sanction was obtained before moving the Bill in the Legislative Assembly It, however appears that after the Bill had been passed and was presented to the Governor he reserved the same for the consideration of the President of India under Art 201 of the Constitution The President gave his assent on 4th March, 1980 It was subsequently that it was published in the official gazette on 5th March, 1980 and, thereafter came into force

28 The question that crops for decision is about the effect of subsequent assent. Article 255 of the Constitution has dealt with such a

contingency It provides that the absence of previous sanction to a Bill does not invalidate an Act, if the Bill, as passed, received the assent of the President. This view was taken by the Supreme Court in Jawaharmal v State of Rajasthan, AIR 1966 SC 764 Mangalore Ganesh Biri Works v State of Mysore AIR 1963 SC 589 Abdul v State of Kerala, AIR 1976 SC 182 In para. 16 of Abdul v State of Kerala (supra) the Supreme Court said —

We may observe that requirement of the proviso regarding the sanction of the President has been satisfied It is no doubt true that the assent of the President was given subsequent to the passing of the Bill by the Legislature but that fact would not affect the validity of the impugned Act in view of the provisions of Art 255 of the Constitution"

29 So far as State Legislatures are concerned, restrictions placed must be firstly in the public interest and secondly the restrictions should be reasonable It has been held that the exercise of the power to tax may normally be presumed to be in the public interest The obvious purpose of taxation is for the raising of revenue without which, no Government can run Consequently in our opinion the requirements of Art. 304(b) were satisfied, as a result whereof the provisions of U P Act No 5 of 1980 cannot be held to be ultra vires contravening Art 301 of the Constitution This argument, also therefore fails

30 The last point urged by the petitioner's learned counsel in all of these cases was about legislative competence of the State Legislature to enact sub-sec (3) of Sec 5 by the Amending Act of the year 1979 This sub-section makes a provision for levy of tax @ rupees three per standard bag of tendu leaves on the persons to whom permits are granted as referred to in clause (b) or Cl. (c) or Cl. (d) of sub-sec (2) of the Act The tax leviable under the aforesaid provision, according to the petitioner is on the permit and as the State Legislature had no competence to make such law the same is ultra vires The incidence of the tax is the grant of permit for transportation of tendu leaves out side the State of U P

31 Justifying the imposition of tax on tendu leaves, the learned Advocate General relied on Entry No 56 of List II of the Constitution. This Entry reads as under —

Taxes on goods and passengers carried by road or on inland water ways

This Entry authorises a tax the incidence of which is on goods and passengers (carried by roads or inland water ways) even though the tax is measured by the fares, or by the distance travelled Under this Entry no tax can be imposed on the permits under which a person may be authorised to export or transport goods. This Entry has been interpreted as of a regulatory or compensatory character In dealing with the interpretation of this Entry the Supreme Court held in International Tourist Corporation v State of Haryana AIR 1981 SC 774 as under —

We have held that the Haryana Passengers and Goods Taxation Act is a law made pursuant to the power given to the State Legislature by Entry 56 of List II Having regard to Attabari Tea Co Ltd v State of Assam (1961) 1 SCR 809 AIR 1961 SC 232 Automobile Transport (Rajasthan) Ltd. v State of Rajasthan (1963) 1 SCR 491 AIR 1962 SC 1406 and Bolani Ores Ltd v State of Orissa (1975) 2 SCR 138 (AIR 1975 SC 17) it has to be held that the power exercisable under Entry 56 of List II is the power to impose taxes which are in the nature of regulatory and compensatory measures In the last of the cases mentioned it was said by the Court, Entry 57 of List II empowers legislation in respect of taxes on vehicles

Suitable for use on roads

32 In Attabari Tea Company v State of Assam (supra) this question was considered by the Supreme Court in detail. In this case the provision under challenge was that of the Assam Taxes (as goods carried by roads or inland water ways) under which the State of Assam was entitled to levy taxes on goods carried by road and inland water ways The Supreme Court upheld the validity of the aforesaid levy by finding the Act to be within the legislative competence of the State Legislature as it was covered by Entry 56 of List II of the Constitution In subsequent cases also the Supreme Court upheld the validity of levy of taxes under the aforesaid Entry if it was found to be compensatory or regulatory

33 The tax in the instant case is not on goods, but on permits. The levy was on the permits given under the Tendu Patta

Adhiniyam 1979 for transport outside the State This has nothing to do with the carrying of goods by road or inland waterways Sub sec (3) of Sec 3 in fact does not confine itself to the tendu pattas which are to be carried by roads or inland water ways Irrespective of the conveyances which are to be utilized in carrying or transporting tendu pattas that tax @ rupees three per standard bag is levyable Consequently the legislation on the basis of Entry 56 cannot be justified Entry 56 as stated above is meant for the purposes different than that for which sub section (3) of Section 5 had been enacted

34 It is essential to validate taxation that there be legislative authority for every tax that is to be levied Article 265 of the Constitution provides

no tax shall be levied or collected except by authority of law

35 Taxation in order to be valid must have been enacted by a legislature which is competent to do so If therefore under List II a tax imposed by the State Legislature is not covered the imposition of that tax would be beyond legislative competence of the legislature imposing the same

36 It was suggested by the learned Advocate General that the power of taxation is so unlimited and so searching in extent that while judging the question of legislative competence a court has to have a wide outlook and is for that purpose required to construe the entries liberally With the proposition of law that a entry should be liberally construed which entitles levy of a particular tax one may not have any difficulty but it is not possible to uphold the tax which is beyond the legislative competence of a State levying it

37 We have found above that Entry 56 of List II of the Constitution relied upon by the State does not justify enactment of sub-sec (3) of Sec 5 of the Act in so far as it purports to levy tax on the permits obtained for transportation

38 By Art 19(6) of the Constitution (As amended by First Amendment Act 1951) what cannot be challenged is the reasonableness of the provision providing for the State monopoly But the said provision will not afford protection to other provisions made by the Act which are not incidental or helpful to the operation of the monopoly Consequently Art 19(6) does not afford any assistance to the respondents to justify sub section (3) of Sec 5 of the Act This provision is separate and distinct from those which provide for the State monopoly

39 In Akadasi v State of Orissa (AIR 1963 SC 1047) (supra) what the Supreme Court said on this controversy is relevant which runs as under —

"A law relating to a State monopoly cannot in the context include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not The said expression should be construed to mean the law relating to the monopoly in its absolutely essential features If a law is passed creating a State monopoly the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the State monopoly It is only those essential and basic provisions which are protected by the latter part of Art 19(6) If there are other provisions made by the Act which are subsidiary incidental or helpful to the operation of the monopoly they do not fall under the said part and their validity must be judged under the first part of Act 19(6)

Sub section (3) of Sec 5 aforesaid is separate and distinct from those sections under which monopoly has been created Consequently sub-sec (3) of section 5 aforesaid does not get immunity from challenge Enactment of this provision has to be justified by showing the Entry of List II under which the State Legislature had competence to enact

40 We have already dealt with Art 265 of the Constitution With regard to this Article the Supreme Court said in K T Moopil Nair etc v State of Kerala AIR 1961 SC 552 as follows —

Article 265 imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or collect a tax except by authority of law that is to say a tax cannot be levied or collected by a mere executive fiat It has to be done by authority of law which must mean valid law In order that the law may be valid the tax proposed to be levied must be within the legislative

competence of the Legislature imposing a tax and authorising the collection thereof and secondly the tax must be subject to the conditions laid down in Art 13 of the Constitution

41 Suggestion was also made by the learned counsel for the State that since by permitting the State parts with its right over which it has absolute monopoly therefore the State was entitled to charge for parting of right with respect to the same The counsel urged that for the said purpose no tax is required to be imposed and as such even if sub section (3) of Sec 5 aforesaid could not be justified on the basis of Entry 56 of List II the State should be held to have a right to realise rupees three per standard bag This submission is not acceptable We have dealt with the provisions of the main Act and the amendments above in detail Those provisions would show that it was subsequently when a Division Bench of this Court held that R 4 as initially enacted was invalid that the present sub sec (3) of Sec 5 aforesaid imposing tax was enacted The Amending Act of 1979 was passed as a Money Bill Sub sec (3) of Sec 5 was a piece of legislation amending tax It is under this provision that the realisations are being made It is not open to the State Government to justify realisation by calling the same to be some thing different than tax

42 For what we have said above we find that sub-sec (3) of Sec 5 is beyond the legislative competence Since the validity of validating Act depends on the legislative competence and as we have found above that it could not impose tax on permits to be granted for transportation therefore Sec 4 of the Amending Act dealing with the validation would also be liable to be held to be beyond legislative competence

43. In the Municipal Corporation City of Ahmedabad v New Shrock Spinning and Weaving Co Ltd AIR 1970 SC 1292 the Supreme Court observed —

'The most important condition of course is that the legislature must possess the power to impose the tax for if it does not the action must ever remain ineffective and illegal whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation If the legislature has the power over the subject matter and competence to make a valid law it can at any time make such a valid law and make it retrospectively so as to bind even past transactions The validity of a validating law therefore depends upon whether the legislature possesses the competence which it claims over the subject matter and whether in making the validation it removes the defect which the Courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax

44 The next question is whether tax imposed could be treated as price or fee charged by the State Government for parting with its exclusive right to trade in tendu patta We have noted above that R 4 of the Act as initially made providing for fee was held by this Court to be illegal for not having provided for service to be rendered to the individuals who pay the same This Judgment has become final After the Judgment the Legislature intervened and repealed the old provisions by re-enacting (sub sec 3) of Sec 5 It is true that this traditional view that there must be actual quid pro quo for a fee has undergone a change in the subsequent decisions of the Supreme Court but as the old provisions have been repealed and the section now provides for the levy of tax it is not possible to uphold the tax on this basis The Amending Act of 1979 was moved as a Money Bill Justification pleaded is as a tax It was suggested that validation clause of the Amending Act prevents unjust enrichment by those who have passed on this burden of the fee hence the said section be not struck down This is not possible to be accepted For upholding the above provision it was necessary that the same was valid As it is not so it has to go along with sub sec (3) of Section 5 of the Amending Act

45 We therefore allow the writ petition by holding that sub sec (3) sec 5 and section 4 of the validating Act 1979 are beyond the legislative competence of the State Legislature

46 In view of the above finding the review applications filed by the State of U P for the review of the Judgments in the writ petitions decided earlier are rejected

47 In the result the writ petition No 10

of 1980 succeeds and is allowed The respondents are restrained from realising the tax under sub sec (3) of sec 5 They are further directed to return the amount realised from the petitioner at an early date

48 The review petitions in writ petitions Nos 3083 of 1973 5316 of 1972 2884 of 1973 3562 of 1973 3679 of 1973 3964 of 1973 4166 of 1973 and 4167 of 1973 are dismissed The petitioners of these cases (who filed writ petitions under Art 226 of the Constitution) will be entitled to refund of the various amounts which had been paid by them

49 In the circumstances we make no order as to costs

Order accordingly

1986 ALL. L J 595

V K KHANNA J

M/s Jain Shudh Vanaspati Ltd Ghaziabad Petitioner v State of Uttar Pradesh and another Respondents

Criminal Misc App'n No 6903 of 1981 D/ 18 11 1985

Prevention of Food Adulteration Act (37 of 1954), Ss. 22-A, 23, 2(ix)(m) — Prosecution on ground that palm oil not conforming to prescribed standard — Standard prescribed by issuing instructions under S 22-A and not by making rules under S 23 — Prosecution is without jurisdiction

S 22 A only gives power to Central Government to give directions regarding the carrying into execution of all or any of the provisions of Act and there is a duty cast on Government to comply with such directions Provision of the Act may include a validly framed rule under the Act regarding which the Central Government can issue directions to the State Government for its compliance Under S 23 Central Government has been empowered to make rules defining the standards of quality for and fixing the limits of variability permissible in respect of any article of food Power conferred under S 23 is different in nature than the power which has been conferred under S 22 A (Para 5)

Where the Central Government issued instructions under S 22 A to various authorities for following the standard prescribed in instructions for palm oil and procedure for making the rule under S 23 in that regard had not been followed prosecution of a person on the ground that the palm oil did not conform to the standard prescribed in instructions would be without jurisdiction and liable to be quashed Such instructions could not be said to have statutory force resulting in committing of offence Further the case could not be brought within the ambit of S 2(ix)(m) i e quality or purity of palm oil fell below prescribed standard as in S 2(ix) prescribed has been defined as prescribed by rules made under the Act and no rules had been framed in the above case (Para 5)

Cases Referred	Chronological	Paras
(1983) 1 FAC 214	1981 Jab LJ 735	3
(1982) 2 FAC 10	1982 FAJ 27 (Delhi)	3
1980 Cri LJ 78	1980 All Cri R 227	3

Amar Saran and C S Saran for Petitioner
A G A for Respondents

ORDER — The present application under section 482 Cr P C has been filed by M/s Jain Shudh Vanaspati Limited which deals in imported palm oil and sells the same to retailers A sample of the palm oil was taken by the Food Inspector Mobile Food Squad from the shop of deceased Hari Om of Rampur The aforesaid sample was sent to the Analyst who found the same not to be conforming to the standard prescribed by the Central Government in exercise of its powers under section 22A of the Prevention of Food Adulteration Act 1954 (hereinafter referred to as the Act) The applicant and deceased Hari Om both were summoned through warrants in pursuance of a complaint filed after obtaining the necessary sanction

2 After the applicant was summoned an application under section 245(2) Cr P C was filed before the Court concerned for dropping of the proceedings mainly on the ground that on the relevant date on which the sample was drawn there was no standard prescribed under the Act and the Rules framed thereunder The aforesaid prayer made by the applicant

for dropping of the proceedings was refused by the Chief Judicial Magistrate by his order dated 9-3-1981 Feeling aggrieved the applicant preferred a revision which too has been dismissed by the Second Additional Sessions Judge Rampur by his order dated 22 10 1981

3 Learned counsel for the petitioner in this application has urged only one point It has been argued that on the date on which the sample of palm oil was taken by the Food Inspector there was no standard prescribed and thus the applicant could not be said to have committed any offence under the Act Along with the affidavit annexure 3 has been filed which shows that the Central Government in exercise of the powers conferred by section 22 A of the Act had sent intimation to various authorities for following the standards prescribed It has been argued that the Central Government is not invested with any power to prescribe standard by issuing executive directions under section 22 A of the Act Reliance has been placed on a decision of the Madhya Pradesh High Court in the case of A L Phanse Food Inspector Municipal Corporation Indore v Prem (1983) 1 FAC 214 and a decision of the Delhi High Court in the case of R N Gujral Assistant Municipal Prosecutor v Mahavir Trading Co (1982) 2 FAC 10 A case of this High Court Satya Prakash v State (1980 All Cr R 227 (1980 Cri LJ 78) has also been cited

4 Learned counsel appearing for the State has not been able to show me any specific item in Appendix B to the Rules framed under the Act which prescribed standard for palm oil on the date on which the sample was taken by the Food Inspector It has however been urged that item A 17 15 i e standard for refined vegetable oil existed on the date on which the sample was drawn and the standard prescribed under this item would apply to the case of the petitioner I am unable to accept the aforesaid argument raised by the learned counsel for the State inasmuch as item A 1715 which prescribes standard for refined vegetable oil pre supposes that there is a standard prescribed for a particular oil The applicant is being prosecuted for oil which does not conform to the standard prescribed in the letter contained in Annexure 3 to the petition The question which thus falls for determination is as to whether what has been prescribed by letter contained in annexure 3 issued in pursuance of the powers of the Central Government under section 22 A can be said to have statutory force resulting in committing of an offence

5 Section 22 A of the Act only gives power to the Central Government to give directions regarding the carrying into execution of all or any of the provisions of this Act and there is a duty cast on the State Government to comply with such directions From a bare reading of section 22 A therefore it becomes clear that there should be a provision of the Act which may include a validly framed rule under the Act regarding which the Central Government can issue directions to the State Governments for its compliance If one looks to section 23 of the Act which confers on the Central Government the power to make rules it would become clear that the power for defining the standards of quality for and fixing the limits of variability permissible in respect of any article of food has been specifically conferred on the Central Government under this provision This power which has to be exercised by the Central Government is different in nature than the power which has been conferred under section 22 A A perusal of this section would show that this power has to be exercised by the Central Government normally after consultation with the committee Sub section (2) of the aforesaid section requires the Central Government to lay before each House of Parliament while it is in session for a total period of 30 days and the Houses can make modification in the rule or can even decide that the rule will have no effect As has been observed above there cannot be an iota of doubt that Annexure 3 has not been issued by the Central Government in exercise of powers under section 23 of the Act as firstly the letter itself makes it clear that the instructions are being issued under section 22A of the Act and secondly the procedure for making the rule as laid down in section 23 of the Act has not been followed In the three cases which have been cited before me it has also been laid down that the Central Government has no power to fix standards under section 22 A of the Act It is therefore clear that there was no statutory standard prescribed for palm oil on the date on which the sample was drawn Learned counsel

appearing for the State has not been able to show me as to under which sub section of section 2(ia) the sample of the palm oil can be categorised as adulterated From what has been placed in this application there cannot be any doubt that the prosecution was bringing the case within the ambit of section 2(ia)(m) of the Act i e the quality or purity of the palm oil fell below the prescribed standard It may also be noticed that in section 2(ia) prescribed has been defined as meaning prescribed by rules under this Act As has been observed above no rules have been framed under this Act in this behalf and by no stretch of imagination the applicant could be said to have violated any provision of the Act The proceedings which have been initiated against the applicant in my opinion thus are without jurisdiction and liable to be quashed

6 In the result the petition succeeds and is allowed The proceedings against the applicant in case No 339 of 1980 pending before the Court of the Chief Judicial Magistrate Rampur are quashed However looking to the facts and circumstances of the case the parties shall bear their own costs

Petition allowed

1986 ALL. L. J 597

(SUPREME COURT)

(From Allahabad)

O CHINNAPPA REDDY AND
E S VENKATARAMIAH JJ

Writ Petn (Civil) Nos 255 with 501 of 1986 with Spl Leave Petn (Civil) Nos 3603 10 of 1986 with W P (Civil) No 690 of 1986 with Spl Leave Petn (Civil) Nos 5084 and 4545 of 1986 D/ 24-4-1986

Sumer Chand Sharma and another Petitioners v State of U P and another Respondents

With

Mahinder Kumar Jain and others Petitioners v State of U P and others Respondents

With

Bharatraj Singh and others Petitioners v R T A Varanasi and others Respondents

With

Gajendra Pal Gupta and others Petitioners v State of U P and others Respondents

With

Rattan Lal Tiwari and others Petitioners v State of U P and others Respondents

And

Smt. P D Jaiswal and another Petitioners v State of U P and others Respondents

U.P Motor Vehicles Special Provisions Act (27 of 1976), Ss. 1(3) and 5 — Motor Vehicles Act (4 of 1939), S 135 (as inserted by Amendment Act 56 of 1969) — Authorisation under S 5 of U P Act — Eligibility for — Private operators plying stage carriages on routes parts of which overlapped nationalised routes, nationalised to the complete exclusion of private operators, after 1-4-1971, date of repeal of U P Act 9 of 1955 — Such operation does not entitle operators in question to grant of authorisation under S 5 (U P Road Transport Services (Development) Act (9 of 1955), S 10(1)(c))

Where the private operators plied their stage carriages over routes which had a common overlapping sector with nationalised routes which were nationalised to the complete exclusion of private operators after 1-4-1971 the date of repeal of U P Road Transport Services (Development) Act 1955 in accordance with practice that grew up in U P the operators would not be entitled on basis of such plying to obtain authorisations from the competent authorities under S 5 of the U P Act 1976 On the repeal of Act 9 of 1955 it was no longer permissible for the transport authorities to permit the private operators to ply their stage carriages over the common sectors in the case of areas and routes which were nationalised to the complete exclusion of private operator If by reason of the unauthorised and unlawful practice which had grown up in Uttar Pradesh private operators had been allowed to ply vehicles over common sectors despite statutory prohibition that would surely not entitle the operators to obtain authorisations under S 5 of the 1976 Act

(Para 1)

Cases Referred	Chronological	Paras
AIR 1986 SC 319	1985 (2) Scale 880	1986
All LJ 215		1
AIR 1984 SC 953		1

CHINNAPPA REDDY, J — The petitioners in these writ petitions and special leave petitions held permits to ply stage carriages over various routes in Uttar Pradesh sectors of which routes were parts of routes which were nationalised in the Fifties The nationalisation schemes made no provision for any private operator plying any stage carriage over any part of the nationalised routes Operation of stage carriages by private operators was totally excluded The result was that from the respective dates of nationalisation it was not permissible to permit any private operator to ply a stage carriage on any sector of the nationalised route However by virtue of sec 10(c) of Uttar Pradesh Road Transport Services (Development) Act IX of 1955 these several petitioners were allowed to ply their stage carriages on the whole of their routes including the common sectors The Uttar Pradesh Road Transport Services (Development) Act 1955 was repealed by Central Act 56 of 1969 Act 56 of 1969 came into effect from April 1 1971 Section 76 of Act 56 of 1969 (which was inserted into the Motor Vehicles Act 1939 as S 135) saved permissions or exemptions granted as well as things done or actions taken under the repealed enactment so far as they were not inconsistent with the provisions of the Act The permission granted under sec 10(1)(c) of U P Act IX of 1955 was patently inconsistent with the provisions of Chapter IV A of the Motor Vehicles Act 1939 and the permission therefore ceased to be effective from 1 4-1971 the date of repeal of the 1955 Act Therefore it was no longer permissible for the private operators to ply their vehicles on the common sectors from 1-4-1971 onwards Despite the statutory prohibition against any private operator plying a stage carriage on any part of the nationalised route in the absence of a provision in the scheme of nationalisation it appears that a practice grew up (we have borrowed the word Practice from one of the judgments of Allahabad High Court which was cited before us) in Uttar Pradesh of permitting private operators to ply their stage carriages over common sectors of nationalised routes provided they did not set down or pick up passengers at any point on the common sectors The Practice was wholly unauthorised and without any legal sanctions whatsoever However in 1976 the Uttar Pradesh Legislature enacted the Uttar Pradesh Motor Vehicles Special Provisions Act 1976 to provide for the grant of authorisation to holders of stage carriage permits to ply their stage carriages over common sectors This was provided by sec 5 of the Act Sec 5 was interpreted by the court in Hindustan Transport Co v State of Uttar Pradesh (AIR 1984 SC 953) to mean that the operator seeking an authorisation should hold a permit on the date of notification Section 1(3) of the Act makes the provisions of the Act applicable only in relation to scheme approved or purporting to be approved areas and routes notified or purporting to be notified under Chapter IV A of the Motor Vehicles Act 1939 as amended in its application to Uttar Pradesh (hereinafter referred to as Principal Act) and to permits issued under Principal Act before the commencement of this Act Basing their submissions on S 1(3) of the 1976 Act Shri S N Kacker and Shri K K Venugopal learned counsel for petitioners urged that the petitioners were entitled to obtain authorisations from the competent authorities under S 5 of the Act if they had permits to ply stage-carriages on the routes having common sectors on July 1 1976 the date of commencement of Act 27 of 1976 They complained that on the basis of the observations of this court in Hindustan Transport Co v State of U P (AIR 1984 SC 953) (supra) their applications for renewal of their authorisations had been wrongly rejected on the ground that they did not possess permits on the dates of the Nationalisation notifications We do not see any force in the submission of the learned counsel As pointed out by us on the repeal of Act 9 of 1955 it was no longer permissible for the transport authorities to permit the private operators to ply their stage carriages over the common sectors in the case of areas and routes which were nationalised to the complete exclusion of private operator If by reason of the unauthorised and unlawful practice which had grown up in Uttar Pradesh private operators had been allowed to ply vehicles over common sectors despite statutory prohibition that would surely not entitle the operators to obtain authorisations under S 5 of the 1976 Act Whatever doubts there might have been

earlier it is now settled by the decision of Constitution Bench in Adarsh Travel's v State of U P 1985 (2) Scale 880 (AIR 1986 SC 319) that where a route is nationalised under Chapter IV A of the Motor Vehicles Act to the total exclusion of private operators a private operator with a permit to ply a stage carriage over another route which has a common overlapping sector with the nationalised route cannot be permitted to ply his vehicle over that part of the overlapping common sector even if he did not pick up or set down passengers on that part of the route The law as declared by the court in Adarsh Travels v State of U P (supra) must be considered to have always been the law under the Motor Vehicles Act The plying of stage carriages by the private operators before the commencement of 1976 Act pursuant to the alleged practice which has grown up in Uttar Pradesh or under interim orders of a court must be considered to be unauthorised so as to disentitle the private operator from seeking the benefit of S 5 of Uttar Pradesh Act 27 of 1976 The writ petitions and special leave petitions are therefore dismissed

Writ petitions and special leave petitions dismissed

1986 A.L.L. J 599

H N SETH Actg C.J AND
J N DUBEY J

Badri Prasad and others Petitioners v Prescribed Authority (Ceiling)/Sub Divisional Officer Agra and others Respondents

Civil Misc Writ Petn No 6070 of 1981 D/ 7 12 1985

(A) U.P Imposition of Ceiling on Land Holdings Act (1 of 1961), S 12-A — Surplus land — Determination — Tenure holder exercising choice with regard to land he wanted to retain as part of his ceiling area — Person acquiring interest in tenure holder s holding is not entitled to be heard in that connection

A person claiming to have acquired an interest in the holding of a tenure holder after the crucial date could not on the basis of any principle of natural justice claim any right of being heard in connection with choice exercised by tenure holder with regard to plots that he would like to retain as part of his ceiling area in determination of surplus land by Prescribed Authority under S 12 A

(Para 9)

S 12 A lays down that in determining surplus land the Prescribed Authority has to as far as possible accept the choice with regard to the plots that the tenure holder would like to retain as part of his ceiling area This section does not contemplate any objection being entertained with regard to the choice of surplus land by a person who may be claiming some interest in the holding of concerned tenure holder Merely because a person claims to have after the crucial date acquired some interest in any part of tenure holder s holding it does not mean that such part of holding has to be excluded from tenure holder s ceiling area with a view to accommodate such person As a matter of fact the scheme of the Act indicates that the fact that someone claims to have acquired an interest in a portion of tenure holder s holding after the crucial date is a factor which has to be completely ignored in proceedings under the Act (Paras 9 11)

(B) U P Imposition of Ceiling on Land Holdings Act (1 of 1961), S 14(3) — Collector's power — Scope — Declaration of surplus land by Prescribed Authority — Collector taking possession of surplus land before final disposal of appeal against declaration and allotting them — Act is without jurisdiction.

The Prescribed Authority declared a portion of land belonging to tenure holder as surplus The tenure holder went in appeal before the District Judge During pendency of appeal he made an application that in place of plots declared by Prescribed Authority as surplus the plots mentioned by him in his application be included in his surplus area District Judge did not consider the said application and dismissed the appeal After dismissal of appeal by District Judge the Collector on requisite intimation sent to him by Prescribed Authority took possession and settled the said surplus land with allottees Meanwhile tenure holder filed writ petition against appellate order of District Judge The High Court set aside the order of District Judge and remanded the case

to District Judge to redetermine land of tenure holder after taking into consideration the choice exercised by him

Held High Court s remanding case to the District Judge would mean that appeal against Prescribed Authority s order had not till then been finally decided and that the same had continued to remain pending throughout Hence any step taken by the Collector for taking possession of tenure holder s land which had been declared surplus by Prescribed Authority while his appeal was so pending before District Judge and in setting the same on ground that it had vested in State Government during pendency of said appeal was completely without jurisdiction Accordingly order of Prescribed Authority directing restitution of possession of surplus land declared by its earlier order after redetermining the surplus land in accordance with choice exercised by tenure holder and as directed by order of District Judge who dismissed Prescribed Authority s earlier order after rehearing the appeal such subsequent order of Prescribed Authority would be perfectly within its jurisdiction and in order (Para 16)

Under S 14 (3) the Collector can have jurisdiction to take possession of surplus land as declared by Prescribed Authority only after the appeal filed by Tenure holder against that order had been decided Any possession taken before that date would be totally without jurisdiction Again as laid down in S 14(3) in such cases title in the land declared as surplus would vest in State Government only after possession of said surplus land had been validly taken with effect from the date on which appeal preferred under S 13 was actually decided The Collector would acquire jurisdiction to settle such surplus land only after property in such surplus land had as provided in S 14 vested in State Government (Para 14)

(C) U P Imposition of Ceiling on Land Holdings Act (1 of 1961), S 37 — Declaration of surplus land by prescribed authority — Order set aside in appeal — Prescribed authority has power to direct restitution of possession in accordance with S 144, C P C of land eventually included in ceiling area of landholder

Under S 37 where order of Prescribed Authority had been varied or reversed in appeal it had the power in accordance with provisions contained in S 144 C P C to direct that steps be taken for restitution of possession of properties that had eventually been included in ceiling area of tenure holder after setting aside the order whereby they had been in the first instance excluded from ceiling area and declared to be his surplus land (Para 18)

Cases Referred Chronological Paras

(1984) CMWP No 11070 of 1982 D/ 15 11
1984 (All) Bhajana v Prescribed Authority 19
1982 All LJ 134 13 16
1981 All LJ 559 9
1981 All LJ 622 18
1974 All LJ 165 AIR 1974 All 178 (FB) 17

W H Khan for Petitioners Standing Counsel R R K Trivedi for Respondents

H N SETH, Actg, C J — Petitioners in this writ petition are the six allottees of plots of land which originally belonged to one Gulab Singh These plots are said to have been taken over by the State of U P under S 14 of U P Imposition of Ceiling on Land Holdings Act 1960 (hereinafter referred to as the Act) They have been in pursuance of the order dated 5-11 1980 passed by the Additional Commissioner Jhansi and the orders dated 23 10 1978 and 16 4 1981 passed by the Prescribed Authority Banda directed to restore possession of the said plots to the original tenure holder Being aggrieved the six petitioners have approached this Court seeking relief under Art 226 of the Constitution of India

2 Briefly stated the facts giving rise to the present petition are that Gulab Singh respondent No 6 was served with a notice under S 10(2) of the Act and the Prescribed Authority declared 37 Bigha 15 Biswa land belonging to him as surplus It also indicated the plots that were to constitute the said surplus area Aggrieved Gulab Singh went in appeal before the District Judge During the pendency of the said appeal he made an application dated 10-10-1975 praying that in place of the plots declared by the Prescribed Authority as surplus the plots mentioned by him in the application be included in his surplus area

However the District Judge did not consider the prayer made by Gulab Singh in his application dated 10-10-1975 and dismissed the appeal filed by him vide order dated 21 10-1975 Gulab Singh thereafter filed a writ petition before this Court claiming inter alia that while deciding this appeal the District Judge had erred in not taking into consideration his choice regarding surplus land contained in his application dated 10-10-1975 In the meantime after Gulab Singh s appeal was dismissed by the District Judge on 21 10-1975 the Prescribed Authority sent the requisite intimation regarding surplus land declared by it to the Collector who took its possession on 24-9 1976 and necessary amaldaramad by substituting the name of State of U P in place of Gulab Singh was made in village papers accordingly Thereafter various plots so declared as surplus were allotted to the six petitioners and their names were also mutated in village records

3 The writ petition filed by Gulab Singh questioning the validity of the order of the District Judge dated 21 10-1975 dismissing his appeal was eventually allowed by the High Court vide its judgment dated 9 2 1978 While allowing the writ petition and setting aside the order of the District Judge dated 21 10-1975 the High Court also observed that it was the duty of the District Judge to while disposing of the Gulab Singh s appeal consider the choice with regard to the surplus land exercised by him in his application dated 10-10-1975

4 The District Judge accordingly reheard Gulab Singh s appeal which was directed against the order of the Prescribed Authority and by his order dated 15-5-1978 he allowed the said appeal set aside the order of the Prescribed Authority and directed it to redetermine Gulab Singh s surplus land after considering the application dated 10-10-1975 filed by him in the appellate Court He however made it clear that the extent of surplus area declared by the Prescribed Authority was not to be disturbed When the matter went back to the Prescribed Authority it vide its order dated 23-10-1978 redetermined the plots that were to be included in his surplus area in accordance with the choice exercised by him in his application dated 10-10-1975

5 Gulab Singh thereafter moved an application dated 8 2 1980 purporting to be under S 27(4) of the Act praying that settlement of plots made by the Collector in favour of the six petitioners be cancelled for the reason that the said plots had been excluded from the area which had been declared to be his surplus land The said application came up for consideration before the Commissioner Banda on 5 11 1980 when Gulab Singh realised that he was not entitled to claim any relief from Commissioner under S 27(4) of the Act. He was also advised to seek appropriate relief by moving an application under S 144 C P C before the Prescribed Authority He accordingly moved an application praying that he should be permitted to withdraw the application dated 8 2 1980 On the same day the Commissioner dismissed Gulab Singh s application dated 8-2 1980 with the observation that the applicant could move the Prescribed Authority for initiating appropriate proceedings under S 144 C P C

6 Gulab Singh then moved an application dated 7 3-1981 purporting to be one under Section 144 C P C before the Prescribed Authority Banda and submitted that the plots which had been declared as surplus by the Prescribed Authority vide his order dated 25 2 1975 and settled with various tenure holders have now been held by the Prescribed Authority vide its order dated 23-10-1975 as belonging to him The said plots have been removed from the list of plots declared as surplus and the Commissioner Jhansi Division Jhansi had vide its order dated 25 11 1980 held that the settlement made by the Collector in respect of those plots was illegal He therefore prayed that the Prescribed Authority should restore possession of those plots to him in accordance with the provision contained in S 144 C P-C The six petitioners filed their objections on 7 3-1981 and contested the prayer made by Gulab Singh According to them various plots have been validly settled with them by the Collector They claimed that the said plots vested in the State Government on 24-9-1976 and their possession had also been taken over by it The Collector was in the circumstances quite justified in settling the plots with them They further claimed that no order passed in proceedings in which they were not made parties was binding on them and Commissioner s order dated 5-11-80 rejecting Gulab Singh s application for taking

proceedings under S 27(4) of the Act did not operate as res judicata They also contended that the application filed by Gulab Singh for relief under S 144 C P C was not maintainable The petitioners also moved another application on 3-4-1981 praying that their objections with regard to maintainability of Gulab Singh s application under S 144 C P C should be decided as a preliminary issue Eventually the Prescribed Authority vide its order dated 16-4-1981 rejected the objection of the petitioners and held that the application under S 144 C P C for restoration of possession filed by Gulab Singh was maintainable It held that the Prescribed Authority had on different dates declared different plots of Gulab Singh as surplus Last such declaration was made on 23 10-1978 whereby new plots had been declared as surplus and the plots which had been declared as surplus under order dated 25 2 1975 had been included in the holding of Gulab Singh In the circumstances the order dated 25-2 1975 became infructuous and it had become necessary to make correction in the village papers accordingly In the result the Prescribed Authority directed that a copy of the order be forwarded to the Sub Divisional Officer Banda so that he may after cancelling the settlement made in favour of the petitioners restore possession of those plots to Gulab Singh

7 As already stated the petitioners in this petition have questioned the validity of the order dated 5-11 1980 passed by the Additional Commissioner Jhansi as also that of the orders dated 23-10-1978 and 16-4-1981 passed by the Prescribed Authority We will proceed to deal with the submissions made by the learned counsel appearing for the petitioners in respect of each of the three impugned orders one after the other

8 So far as the order dated 23-10-1978 passed by the Prescribed Authority is concerned it was made after the case was remanded to it by the District Judge with the direction that the Prescribed Authority has to redetermine the surplus area of Gulab Singh after taking into account the choice made by him in his application dated 10-10-1975 The remand order came to be made by the District Judge as a sequel to the order passed by the High Court in a writ petition wherein the original order passed by the District Judge on 21 10-1975 dismissing Gulab Singh s appeal had been set aside The validity of the order of High Court dated 9 2 1978 and that of the District Judge dated 10-5 1978 remanding the case to the Prescribed Authority for fresh determination of Gulab Singh s surplus area after taking into account the choice exercised by him in his application dated 10 10-1975 has not been questioned before us Learned counsel appearing for the petitioners contended that before considering the question as to whether or not the plots indicated by Gulab Singh in his application dated 10-10-1975 should be declared as surplus the Prescribed Authority should have in as much as those plots stood settled with them afforded to them an opportunity to file their objections According to the petitioners this was the minimum requirement of principles of natural justice

9 We are unable to accept this submission It is not disputed that the plots indicated in Gulab Singh s application dated 10 10 1975 formed part of his holding Section 12 A of the Act lays down that in determining the surplus land the Prescribed Authority has to as far as possible accept the choice with regard to the plots that he would like to retain as part of his ceiling area This section does not contemplate any objection being entertained with regard to the choice of surplus land by a person who may be claiming some interest in the holding of the concerned tenure holder Merely because a person claims to have after the crucial date acquired some interest in any part of tenure holder s holding it does not mean that such part of the holding has to be included in (excluded from) tenure holders ceiling area with a view to accommodate such person As a matter of fact the scheme of the Act indicates that the fact that some one claims to have acquired an interest in a portion of tenure holder s holding after the crucial date is a factor which has to be completely ignored in proceedings under the Act In these circumstances the person so claiming to have acquired an interest in the holding of a tenure holder after the crucial date cannot on the basis of any principle of natural justice claim any right for being heard in connection with choice under Section 12 A of the Act exercised by the tenure holder We are accordingly not impressed with the submission that the petitioners were entitled to any notice in determining the surplus land of Gulab Singh In taking the view we derive considerable

support from following observation made by a learned Judge of this Court in the case of Parsadwa v 3rd Addl District Judge Banda 1981 A^H LJ 559 —

Moreover the petitioner is only allottee He does not suffer from the order passed by the Appellate Authority In fact any person could be considered to be aggrieved by the order of the Prescribed Authority it was the State

10 Learned counsel for the petitioners next contended that a perusal of the order dated 23-10-1978 indicates that the Prescribed Authority accepted the choice indicated by Gulab Singh as it was labouring under an impression that it had no other option in the matter According to him the Prescribed Authority had a discretion in the matter and it was not bound to accept whatever choice had been indicated by Gulab Singh in his application dated 10-10-1975 This according to the learned counsel for the petitioners vitiates the order dated 23-10-1978 passed by the Prescribed Authority

11 We are unable to find any merit in this submission as well Once it is held that the petitioners did not have any locus standi in the matter of the choice exercised by Gulab Singh it would follow that the aforesaid objection cannot be countenanced at their instance Moreover the scheme underlying Section 12A of the Act clearly is that the choice exercised by the tenure holder in this regard should as far as possible be accepted The factors in the light of which the choice made by the tenure holder may not be strictly adhered to can be spelled out in the light of provisos (a) to (d) contained in that section Admittedly none of such factors which might have impelled the Prescribed Authority not to accept the choice indicated by Gulab Singh in his application dated 10-10-1975 are present in the instant case The only circumstance relied upon by the petitioners in this regard was that inasmuch as they had acquired some interest in a part of Gulab Singh s holding they might have succeeded in persuading the Prescribed Authority to exclude the same from Gulab Singh s ceiling area This has not been enumerated as one of the factors which has to be taken into consideration under any of the proviso to S 12 A of the Act. In these circumstances we are not satisfied that the order dated 23-10-1978 suffers from any error of law or of jurisdiction In our opinion no case has been made out to interfere with the said order in exercise of our jurisdiction under Art 226 of the Constitution of India

12 We now proceed to consider the propriety of the order dated 5-11 1980 passed by the Additional Commissioner Jhansi As already stated after the District Judge dismissed the appeal filed by Gulab Singh which was directed against the order of the Prescribed Authority dated 25-2 1975 declaring 37 Bigha 15 Biswa land as surplus on 21 10-1975 information was sent to the Collector who took proceedings to take possession of the land so declared as surplus Gulab Singh impugned the validity of the order of the District Judge dated 21 10-1975 by filing a writ petition before this Court Subsequently the writ petition filed by Gulab Singh was allowed and the appellate order passed by the District Judge dated 21 10-1975 was set aside Gulab Singh thereafter moved an application before the Additional Commissioner Jhansi requesting him to exercise jurisdiction under S 27(4) of the Act and to cancel the settlement made in favour of the petitioners However Gulab Singh realised that the provisions of S 27(4) of the Act were not applicable to the facts of the case He accordingly moved an application dated 5-11 1980 praying that he may be permitted to withdraw the said application The Additional Commissioner by means of the impugned order dismissed the application filed by Gulab Singh accordingly While dismissing the application of Gulab Singh he merely observed that Gulab Singh may move an application for restoration of his land under S 144 C P C and also noticed the submission made by Gulab Singh that the settlement obtained by the petitioners had become illegal While passing the impugned order the Additional Commissioner did not give any decision either on the question as to whether the settlement obtained by the petitioners had in the circumstances of the case become illegal or on the question whether any application under S 144 C P C would in fact be entertainable He merely dismissed the application made by Gulab Singh for cancellation of petitioners lease under S 27(4) of the Act as the said application was not pressed by him Clearly an order dismissing an application on the ground that the applicant does not press it does not suffer from any error of law or of jurisdiction The

order dated 5 11 1980 also does not deserve to be interfered with by this Court in exercise of its jurisdiction under Art 226 of the Constitution of India

13 We now come to the last order namely the order dated 16-4-1981 of the Prescribed Authority wherein it directed that a copy thereof be forwarded to the Sub Divisional Officer to enable him to restore possession of the plots that had been declared surplus under the order of the Prescribed Authority dated 25-2 1975 to Gulab Singh after cancelling the settlement made in favour of the petitioners Learned counsel for the petitioners submitted that in the instant case after the appeal against the order of the Prescribed Authority dated 25 2 1975 was dismissed by the District Judge on 21 10-1975 it, as laid down in S 14 of the Act became open to the Collector to take possession of the surplus land as determined by the Prescribed Authority After possession was taken by the Collector the surplus land as laid down in sub-sec (3) of S 14 of the Act vested in the State Government and the Collector became fully competent to settle the same with the petitioners Any choice made by the tenure holder after the land declared as surplus vested in the State was of no consequence It was accordingly not open to the Prescribed Authority to direct restitution of possession of land to Gulab Singh after the same had in pursuance of the proceedings taken under S 14 of the Act vested in the State Government They tried to support their contention by relying upon a decision of this Court in the case of Smt Ram Kali v State of U P 1982 A'l LJ 134

14 We are not impressed by the aforesaid submission made by learned counsel for the petitioners Section 14 of the Act authorises the Collector to take possession of the surplus land determined under Ss 11 12 or 13 of the Act in any of following three contingencies —

1 In case where the order passed under sub sec (1) of S 11 has become final after the date of its becoming so final or

2 In case where no appeal has been preferred under S 13 after the date of expiry of the period of limitation provided for filing such appeal or

3 In case where an appeal has been preferred under S 13 after the date of its decision

The case before us does not fall in any of the first two categories mentioned above Under the third category the Collector could have had jurisdiction to take possession of the surplus land as declared by the Prescribed Authority vide its order dated 25 2 1975 only after the appeal filed by Gulab Singh against that order had been decided Any possession taken before such date would be totally without jurisdiction Again as laid down in sub sec (3) of S 14 of the Act in such cases the title in the land declared as surplus would vest only after possession of the surplus land has been validly taken with effect from the date on which the appeal preferred under S 13 of the Act is actually decided It goes without saying that the Collector acquires jurisdiction to settle such surplus land with various persons only after the property in such surplus land has as provided in S 14 of the Act vested in the State Government

15 According to learned counsel for the petitioners the position was that the appeal against Prescribed Authority s order dated 25 2 1975 was actually dismissed by the District Judge on 21 10 1975 The Collector could therefore take possession of the land declared as surplus and the title in the said land would vest in the State Government with effect from 21 10-1975 The land had been settled by the Collector with the petitioners at a time when the order of the District Judge dated 21 10-1975 stood intact The appellate order of the District Judge was set aside by the High Court in a petition under Art 226 of the Constitution only on 9 2 1978 long after the plots in question had been validly settled by the Collector with the six petitioners which settlement would according to the petitioners not stand vitiated by any subsequent event

16 We are unable to accept this submission When the High Court allowed the writ petition filed by Gulab Singh on 9 2 1978 and set aside the order of the District Judge dated 21 10-1975 and remanded the case to the District Judge to redetermine the land of Gulab Singh after taking into consideration the choice exercised by him by means of his application dated 10-10-1975 it meant that the appeal filed by Gulab Singh against the Prescribed Authority s order dated 25 2 1975 had not till then been finally decided and that the same had continued to remain pending throughout Any step taken by the Collector for taking possession of Gulab Singh s land which had been declared surplus by the order of Prescribed

Authority dated 25-2 1975 while his appeal was pending before the District Judge and in setting the same on the ground that it had vested in the State Government during the pendency of the said appeal was completely without jurisdiction The action of the Collector could not in any way affect the rights of Gulab Singh in making the choice indicated in his application dated 10-10-1975 Reliance placed by the petitioners on Smt Ram Kali s case (1982 All LJ 134) (supra) is in this regard not well founded In that case the Court observed thus —

There is uniform case law of this Court on the point that the petitioner can revise his choice till such times as her rights stand extinguished under S 14 of the Act In the instant case from the record it is clear that the Prescribed Authority held that the so-called dispossession of petitioner on 8-4-1977 was illegal In this view of the matter it has to be held that there was no extinction of interest by the petitioner when she moved an application dated 6-9-1979 and therefore there was no good ground for rejecting the prayer made in the said application

These observations in our opinion instead of supporting the petitioners contention go against them for in this case it was held that inasmuch as the earlier dispossession of the petitioner by the ceiling authorities being illegal petitioner s rights were not extinguished and that it was open to her to exercise her choice even after the alleged dispossession Applying the principles to the facts of the present case we find that the alleged dispossession of Gulab Singh in pursuance of the order of the Prescribed Authority dated 25 2 1975 as affirmed by the illegal order of the District Judge dated 21 10-1975 cannot be termed as legal and as such there was no impediment in the way of the ceiling authorities in giving effect to the choice indicated by Gulab Singh in his application dated 10 10 1975 which admittedly was made during the pendency of the appeal against Prescribed Authority s order dated 25-2 1975 We have already held that the order of the Prescribed Authority dated 23-10-1978 whereby it altered the surplus land of Gulab Singh as declared by its earlier order dated 25 2 1975 was perfectly within its jurisdiction and in order

17 Learned counsel for the petitioners then contended that even if it be that the Prescribed Authority had by its order dated 23-10-1978 validly altered the surplus land as declared by its earlier order dated 25-2 1975 it had no jurisdiction to direct restitution of land to Gulab Singh inasmuch as neither the Act specifically confers upon the Prescribed Authority any power to direct restitution nor does any such power inhere in it He relied upon the following passage occurring in the Full Bench decision of this Court in the case of Syed Anjaz Ali Khan v Mohd Rafiq 1974 All LJ 165 (AIR 1974 All 178) —

However the decision in these two single Judge cases as also the decision in Ram Niwas s case by Division Bench justifying the power of eviction on basis of inherent jurisdiction to order restitution on the analogy of S 151 and S 144 of the Code of Civil Procedure do not lay down the correct law The exercise of inherent jurisdiction is the attribute of a Court of law of general jurisdiction for every Court is constituted for the purpose of doing justice according to law and must be deemed to possess as a necessary corollary and as inherent in its very constitution all such powers as may be necessary to do the right and to undo the wrong in the course of administration of justice Even in the case of a Court the inherent power is not unlimited in that if a matter falls within the ambit of express provisions of the statute the inherent power of the Court must to that extent be regarded as abrogated by the Legislature An authority or Tribunal of limited jurisdiction not being a Court can have no inherent power unless the statute confers such a power to them and in absence of any such conferment of power the authority or Tribunal can pass only such orders as the provisions of the Act under which they are created provide for special authorities and tribunals are constituted under special statutes and for special objectives and therefore it is not possible to imply inherent powers in them In their case one must turn to the statute itself to find a power either in express terms or by necessary implication and contended that as the ceiling authorities are not Courts of law they do not possess any inherent power to direct restitution of properties

18 Learned counsel for the respondents

contested the submission made on behalf of the petitioners that the U P Imposition of Ceiling on Land Holdings Act 1960 does not specifically confer a power on the Prescribed Authorities to direct restitution in a case where an order passed by them is subsequently altered He invited our attention to Sec 37 of the Act which runs thus —

"Any officer or authority holding an inquiry or hearing an objection under this Act shall in so far as it may be applicable have all powers and privileges of a civil court and follow the procedure laid down in the Code of Civil Procedure 1908 for the trial and disposal of suits relating to immovable property

Learned counsel for the petitioners contended that the power conferred by Sec 37 of the Act could be exercised only for the purposes of hearing and disposal of objections under the Act The provisions of the Code of Civil Procedure have not been made applicable at any stage subsequent to the disposal of the objections under the Act According to him in the instant case the impugned power of restitution is being exercised by the Prescribed Authority at a stage after the objections of Gulab Singh had been finally disposed of by the ceiling authorities Similar question arose for consideration before R R Rastogi J in the case of Smt Kailashiya v Ist A.D.J Banda 1981 All LJ 622 In that case the order of the Prescribed Authority whereunder possession of the land declared by it as surplus was subsequently set aside in appeal the question that arose for consideration was as to whether it was open to the Prescribed Authority to in exercise of powers conferred by Sec 37 of the Act direct restitution of possession This Court pointed out that under the provision of Sec 37 of the Act the Prescribed Authority had been clothed with all the powers and privileges of a civil court and has been required to follow the procedure laid down in the Code of Civil Procedure for the trial and disposal of suit relating to immovable property The Court posed for itself the question as to whether while considering an application for restitution of possession the occasion for which is the order of the Prescribed Authority itself could it be said that it is merely a sequence of holding an inquiry or hearing of an objection under the Act or did it constitute a proceeding which did not come within the purview of the Act After considering the scheme and the objective of the Act it proceeded to observe thus —

The preamble of the Act shows that the purpose of the Act is to provide for the imposition of ceiling on land holdings and the purpose is to serve the interest of the community to ensure increased agricultural production to provide land for landless agricultural labourers and for other public purposes as best to subserve the common good The determination of the ceiling area applicable to a tenure holder and of the surplus land with him is required to be made with this purpose in view When it is found that the tenure holder has no surplus land the proceedings have to be dropped against him and necessary effect has to be given to consequence which flow from that order Under Sec 144 C P C restitution is required to be made where and in so far as a decree or order is varied or reversed and the Court of first instance shall cause restitution to be made The parties are required to be placed in the position which they would have occupied but for such decree or order or such part thereof as has been varied or reversed

In the instant case the Prescribed Authority did declare some surplus land with the petitioner They filed an appeal which was allowed but during the pendency of the appeal possession was taken and settlement was made Under Sec 14 of the Act possession of surplus land is to be taken in case where an appeal has been preferred under Sec 13 after the date of its decision In other words possession could not have been taken of surplus land during the pendency of the appeal This is one aspect of the matter Ultimately the Prescribed Authority found that the petitioners had no surplus land within the earlier order passed by it determining surplus land stood totally superseded As a result of this subsequent order parties were required to be placed in a position which they would have occupied but for the earlier order In our opinion therefore restitution of possession is nothing else but giving effect to the orders passed in proceedings under the Act and would be covered by Sec 37 of the Act and inasmuch as the Prescribed Authority failed to exercise the jurisdiction vested in it the order passed by it rejecting the application of the petitioners and similar order passed by the appellate court are liable to be quashed

We respectfully agree with the manner in which R R Rastogi J has interpreted the provisions of Sec 37 of the Act and his finding that where the order of a prescribed authority has been varied or reversed in appeal it has the power to direct restitution in accordance with the provisions contained in Sec 144 C P C Inasmuch as the said power has been specifically conferred upon the Ceiling authorities by the Act it is not necessary for us to go into the further question as to whether or not the ceiling authorities could have had an inherent jurisdiction to direct restitution had such a power not been specifically conferred upon them With the result we find no error in the order of the Prescribed Authority in directing that steps be taken for restitution of possession of properties that had eventually been included in the ceiling area of Gulab Singh after setting aside the order whereby they had been in the first instance excluded from the ceiling area and declared to be his surplus land

19 Learned counsel for the petitioners next contended that in the instant case the Prescribed Authority has directed cancellation of the settlement that had been made by the Collector in their favour He relied upon a decision of a learned Single Judge of this Court in the case of Bhajna v Prescribed Authority C M Writ Petn No 11070 of 1982 decided on 15 11 1984 wherein it had been held that settlement of land made by the Collector under the provisions of the Act can be cancelled under Sec 27(3) of the Act only by the Commissioner and the Prescribed Authority has no jurisdiction to cancel the said settlement It may be that the Prescribed Authority may now have a power under Sec 27 of the Act to cancel a settlement of land made by the Collector in respect of the plots that had vested in the State Government The learned Judge in Bhajna s case (supra) however did not go into the question as to whether the Prescribed Authority could exercise the powers conferred upon a civil court by Sec 144 C P C He did not consider the question with regard to applicability of Sec 37 of the Act We have already indicated above that the proceedings taken by the Collector for taking possession of the land declared surplus by the Prescribed Authority vide its order dated 25 2 1975 are without jurisdiction and are as such non est Accordingly no question of formally setting aside the settlement made by the Collector in favour of the petitioners arises We have already pointed out that in view of the subsequent order passed by the Prescribed Authority on 23-10-1978 altering the plots included in Gulab Singh s ceiling area Gulab Singh is entitled to restitution of possession over the plots which had earlier been declared to be his surplus land This right cannot stand defeated merely because of a settlement in favour of the petitioners made by the Collector without jurisdiction

20 In the result we find that the petitioners have failed to make out a case for interfering with the order of the Prescribed Authority dated 16-4-1981

21 In the end learned counsel for the petitioners contended that the six petitioners were poor landless labourers and they are going to be deprived of possession over the land from which they were earning their livelihood In our opinion the petitioners need not entertain any such apprehension because we feel that in all fairness the respondents should now take steps to allot such land of Gulab Singh to the petitioners which now stands excluded from his ceiling area

22 In view of the aforesaid discussion we find no merit in this petition which fails and is dismissed However we make no order as to costs

Petition dismissed

1986 ALL. L J 607

B L YADAV J

Ram Kishan Misra Applicant v State of U P Opposite Party

Criminal Misc Bail Appln No 14444 of 1985 D/ 18 10-1985

Criminal P C. (2 of 1974) S. 439 — Grant of bail — Applicant neither surrendering before Magistrate nor before Sessions Court — His bail application cannot be considered.

In view of the provisions of S 439 Cr P C unless the applicant was taken into custody or in other words he surrenders himself either before the Sessions Court or before the

---

BD DD/A488/86/VSM/MVI

Magistrate the High Court cannot consider the bail application nor he can be enlarged on bail by the High Court The Legislature was wise enough to provide under S 439(1) a condition precedent that the accused must be in custody before his bail application can be moved and considered before the High Court 1971 All Cri C 366 1976 Cri LJ 1142 (All) (FB) and AIR 1980 SC 785 Distinguished

(Para 11)

Cases Referred Chronological Paras

AIR 1980 SC 785 1980 Cri LJ 426 4 11
1976 Cri LJ 1142 1976 All LJ 223 (FB) 4 9
1971 All Cri C 366 1971 All Cri R 515 4 10

S S Chauhan for Applicant Standing Counsel for Opposite party

ORDER — This is an application under S 439 of the Code of Criminal Procedure 1973 on behalf of Ram Kishan Misra and the prayer has been made that he may be permitted to surrender before this Court and his bail application may be considered on merits

2 In accordance with the prosecution case the applicant is sought to be prosecuted in Crime No 458 of 1985 Police Station Kotwali district Farrukhabad for an offence under Sec 302 I P C The applicant has neither surrendered before the Magistrate nor before the Sessions Judge He has made this application that he may be permitted to surrender before this Court and his bail application may be considered on merits

3 I have heard Sri N C Upadhyaya the learned Senior Advocate for the applicant and Sri S N Singh the learned Counsel for the State

4 It has been urged by the learned counsel for the applicant that the applicant has not surrendered so far and wants to surrender before this Court and his bail application may be considered directly by this Court without any application having been filed either before the Magistrate or before the Sessions Judge and on merits he urged that the applicant is entitled to bail In support of his submissions he placed reliance on Parmjit Singh v State of U P 1971 All Cri C 366 Onkar Nath Agarwal v State 1976 All LJ 223 (1976 Cri LJ 1142) (SB) and Niranjan Singh v Prabhakar Rajaram Kharote AIR 1980 SC 785

5 I have considered the arguments advanced on behalf of the parties In this case the present application has been moved before this Court without any such application having been moved either before the Magistrate or before the Sessions Court The applicant has also not surrendered either before the Magistrate or before the Sessions Court but he wants to surrender before this Court The power of this Court for granting bail has been provided under S 439 Cr P C 1973 It is better to set out the statutory provision of S 439(1) Cr P C 1973 so far it is relevant for the present case —

439 Special powers of High Court or Court of Session regarding bail —

(1) A High Court or Court of Session may direct —

(a) that any person accused of an offence and in custody be released on bail and if the offence is of the nature specified in sub section (3) of section 437 may impose any condition which it considers necessary for the purposes mentioned in that sub section

A bare perusal of the aforesaid provision makes it clear that for a bail application being considered by this Court it is necessary that a person must be accused of an offence and further he must be in custody The custody in connection with an accused when he has been involved in some criminal case obviously means nothing less than having surrendered and having been sent to jail or having been remanded to jail by the Court In other words it means that he must be under the supervision of either the police or the jail authorities

6 The word custody according to Bouvier's Law Dictionary denotes (on page 741) the detainer of a person by virtue of a lawful authority Custody has been held to mean nothing less than actual imprisonment

7 According to Encylopaedic Law Dictionary by Biswas custody means as soon as an accused or suspected person comes into the hands of a police officer he is in the absence of clear evidence to the contrary in custody

According to Words and Phrases Legally defined the word custody denotes commit to custody means to commit to prison or where any enactment authorises or requires

committal to some other place of detention instead of committal to prison to that other place

8. It is, therefore clear that custody means committing to prison

9 Onkar Nath Agarwal v State (1976 Cri LJ 1142) (All) (Supra) was a Special Bench case wherein the scope of S 438 Cr P C 1973 was considered in respect of granting anticipatory bail and the controversy as to whether anticipatory bail application could be entertained by the High Court directly and in that connection it was held that the High Court can entertain application directly It does not help the applicant

10 In Parmjit Sihgh v State of U P (1971 All Cri C 366) (Supra) it was held that the High Court can entertain an application for bail under Sec 439 Cr P C (old) I have no quarrel with the proposition laid by this case But I think that the present case is in respect of different controversy

11 In Niranjan Singh v Prabhakar Rajaram Kharote (AIR 1980 SC 785) (Supra) their Lordships of the Supreme Court were dealing with a case with entirely different facts and in that case the accused had surrendered before the Sessions Judge On page 787 (para 5) Hon ble Krishna Iyer J held as follows —

> But here the position is different The accused were not absconding but had appeared and surrendered before the Sessions Judge

Similarly in para 9 of the judgment the observation was made as follows —

> the accused surrendered before the Sessions Court and the Sessions Court acquired jurisdiction to consider the bail application

Hence the aforesaid case was based on different facts where the accused had surrendered before the Sessions Court. But in the instant case the accused had not surrendered I am of the opinion that in view of the provisions of S 439 Cr P C unless the applicant was taken into custody or in other words he surrenders himself either before the Sessions Court or before the Magistrate this Court cannot consider the bail application nor he can be enlarged on bail by this Court It appears that the Legislature was wise enough to provide under S 439(1) a condition precedent that the accused must be in custody before his bail application can be moved and considered before the High Court As the applicant, in the instant case was not in custody hence his bail application cannot be considered by this Court

12 As regards the argument of the learned counsel for the applicant that the bail application can be considered directly by the High Court. I am of the opinion that as the applicant has not surrendered and he was not in custody hence there was no question of his bail application being considered and it is unnecessary to go into that controversy

13 Similarly as I am of the opinion that unless the applicant surrenders or is taken into custody he has no right to make the bail application nor this can be considered it would be equally futile to consider the bail application of the applicant on merits

14 I am accordingly of the view that the present bail application is not maintainable as the accused-applicant was not in custody This application is accordingly rejected as not maintainable It is however open to the applicant to pursue his remedy provided under the law

Application rejected

1986 ALL. L. J 609

(LUCKNOW BENCH)

H N SETH Ag C J

Km. Raj Kumari, Petitioner v Addl. District Judge VI Lucknow and others, Respondents.

Writ Petn No 3974 of 1980 D/ 1 11 1985

(A) U.P (Temporary) Control of Rent and Eviction Act (3 of 1947), S 3 — Civil P C (5 of 1908), S 47, O 21 R 1 — Compromise eviction decree — It is executable if statutory grounds for eviction pleaded by landlord have been admitted by tenant in compromise.

Where a decree has been passed on the basis of a compromise the court is to examine whether the statutory grounds for eviction have been pleaded and which the tenant has admitted in the compromise The satisfaction that the statutory requirements had been

complied with has to be arrived at by the executing court on totality of facts of a particular case bearing in mind the entire circumstances from the stage of pleading up to the stage when the compromise is effected Where the pleadings and other material on the record make out a prima facie case about the existence of the statutory grounds for eviction a compromise cannot be held to be invalid and that the executing court is required to give effect to it (Para 5)

In the instant case the landlord had filed the suit for eviction of the tenant with the allegation that he had defaulted in payment of rent and had also denied landlord s title The tenant initially filed a written statement contesting the claim of the landord but eventually entered into a compromise Under the compromise the tenant admitted the claim of the landlord and agreed to the passing of eviction decree against him The question was whether the compromise decree was executable

Held, the compromise eviction decree was executable When the tenant agreed to mention in the compromise that he admitted the claim of the landlord, what he intended to convey was that he admitted all the facts which gave a cause of action to the plaintiff to file the suit for his ejectment and the facts admittedly in the instant case were that the tenant had wrongly denied the landlord s title to the property and had further defaulted in payment of rent which are statutory grounds for eviction (Paras 6 7)

(B) Civil P C (5 of 1908), O 21, R 2(3) — Adjustment of decree — Compromise eviction decree — Execution — Plea by tenant that compromise decree was adjusted as fresh tenancy has been created between the parties after passing of compromise decree — Adjustment not recorded under O 21, R. 2(1) or (2) — Execution Court cannot take notice of adjustment — Execution of decree cannot be refused on that ground. (U P (Temporary) Control of Rent and Eviction Act (3 of 1947), S 3) (Para 11)

Cases Referred Chronological	Paras
AIR 1978 SC 22	5 7
AIR 1968 SC 1087	11
AIR 1928 Oudh 195 (FB)	11

H. S Sahai, for Petitioner Vijai Kishna and N K. Seth for Respondents

ORDER — By this petition under Article 226 of the Constitution petitioner Km Raj Kumari seeks relief against an order dated 6th of November 1980 passed by the VI Additional District Judge Lucknow in Civil Revision No 208 of 1979

2 Briefly stated the facts giving rise to the present petition are that respondent No 2 filed a suit on 3rd of November 1970 with the allegation that Brij Mohan Das father of the petitioner was his tenant in House No 40 Model House Lucknow and that he had defaulted in payment of rent and had also rendered himself liable to ejectment as he had denied his title Defendant Brij Mohan Das filed a written statement and contested the suit However on 9th of February 1972 parties entered into a compromise as a result of which the plaintiff's suit was decreed for arrears of rent eviction and damages The decree also allowed three years time to Brij Mohan Das to vacate the premises When after the lapse of three years the decree-holder (Respondent No 2) put his decree into execution the petitioner filed objections under Section 47/151 of the Code of Civil Procedure challenging the decree-holder s right to execute the decree She claimed that on the date of compromise late Brij Mohan Das was a neurotic patient and had been admitted in the hospital for treatment and that the alleged compromise on the basis of which the decree was passed was null and void She further claimed that subsequently the decree-holder had entered into a fresh compromise of tenancy with late Brij Mohan Das by demanding arrears of rent at an enhanced rate vide his letter dated 8th of August 1982 and he had thus waived his rights under compromise decree dated 9th of February 1972 Inasmuch as the said decree had been adjusted and stood satisfied, it could not be executed against the petitioner

3 The executing court accepted the objection filed by the petitioner It observed that the compromise decree was a nullity inas much as the statutory grounds for directing eviction of Brij Mohan Das did not exist. It also held that the conduct of the parties indicated that a fresh agreement of tenancy in favour of judgment debtor Brij Mohan Das had come into existence and as such the decree was not executable

4 Aggrieved the decree-holder went up in revision before the District Judge, Lucknow. The revisional court came to the conclusion that prima facie the decree in question was not a nullity. It had been passed in accordance with the provisions of U.P. Act No. 3 of 1947 and that the executing court could not refuse to execute the same on that ground. It also held that the court below had erred in holding that as a result of the notice given by the decree-holder Ram Kumar Agrawal on 8th of August 1972 a fresh tenancy in favour of the judgment debtor had come into existence rendering the decree unexecutable. In the result it held that the decree in question was executable and the court below had wrongly refused to exercise its jurisdiction to execute the same. It accordingly allowed the revision and sent back the file to the executing court with the direction that it should execute the decree in accordance with law. Aggrieved Km. Raj Kumari has approached this Court for relief under Article 226 of the Constitution.

5 Learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of Smt. Nai Bahu v. Lala Ramnaravan, AIR 1978 SC 22 and submitted that in view of the fact that in the State of Uttar Pradesh the Rent Control and Eviction Act, namely, U.P. Act No. 3 of 1947 and subsequently U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) are in force, a landlord cannot obtain eviction of a tenant unless he can satisfy that the requirements of the provisions of those Acts have been satisfied. According to him, a decree for eviction of a tenant cannot be passed solely on the basis of a compromise between the parties. As in the instant case the decree for ejectment of the petitioner was not passed on one of the grounds mentioned in section 3(1) of U.P. Act No. 3 of 1947, it was invalid and cannot be executed. I am unable to accept this submission. The Supreme Court decision relied upon by the petitioner itself lay down that in cases where a decree has been passed on the basis of a compromise, the court is to examine whether the statutory grounds for eviction have been pleaded and which the tenant has admitted in the compromise. The satisfaction that the statutory requirements had been complied with has to be arrived at by the executing court on totality of facts of a particular case bearing in mind the entire circumstances from the stage of pleading up to the stage when the compromise is effected. Where the pleadings and other material on the record make out a prima facie case about the existence of the statutory grounds for eviction, a compromise cannot be held to be invalid and that the executing court is required to give effect to it. In the instant case, it is not disputed that Ram Kumar Agarwal (Respondent No. 2) had filed the suit for eviction of petitioner's father with the allegation that he had defaulted in payment of rent and had also denied landlord's title. Brij Mohan Das filed a written statement contesting the suit. In the written statement he did not admit the title of the plaintiff and he also denied that he was in arrears of rent. Subsequently, however, the parties entered into a compromise, paragraph 1 whereof ran thus :—

That the defendant admits the claim of the plaintiff. The suit of the plaintiff be decreed for ejectment, arrears of rent and mesne profits at the rate of Rs. 15.62 per month.

6 This clearly shows that the defendant gave up his claim and agreed to the passing of the decree for his ejectment, arrears of rent and damages on the basis of the allegations made in the plaint. Those allegations were to the effect that the defendant had wrongly denied the plaintiff's title to the property and had further defaulted in payment of rent. Admittedly these two grounds were available to the plaintiff for filing a suit for ejectment of Brij Mohan Das in accordance with the provisions of Section 3 of the U.P. Act No. 3 of 1947.

7 Learned counsel for the petitioner strongly contended that aforesaid averment made in the compromise merely indicated that the petitioner had admitted the claim of the plaintiff which was to the effect that a decree for defendant's ejectment be made. The admission should not be construed as implying that he had admitted the fact that he had denied plaintiff's title and had also made default in payment of rent. This submission in my opinion has no force. When the defendant agreed to mention in the compromise that he admitted the claim of the plaintiff, what he intended to convey was that he admitted all the facts which gave a cause of

action to the plaintiff to file the suit for his ejectment In these circumstances viewed in the light of the observations made by the Supreme Court in the case of Smt Nai Bahu (AIR 1978 SC 22) (supra) it is clear that the said decree had been in compliance with the provisions of U P Act No 3 of 1947 and it is not open to the objection that it is not executable for the reason urged by the learned counsel

8 Learned counsel for the petitioner next contended that after the decree in question was passed on the basis of the compromise arrived at between the parties on 9th of February 1972, the decree-holder gave a notice to the judgment debtor on 8th of August, 1972 which ran thus —

Dear Sir

You are hereby requested to pay rent of Rs 19 50 per month with effect from 15th July 1972 in respect of the premises occupied by you as a tenant thereof in accordance with the provisions of the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972

9 The judgment debtor thereafter paid rent to the laddlord as demanded by him and the landlord also accepted the same He urged that this clearly showed that on 8th of August, 1972 the landlord had agreed to accept petitioner s father as a tenant and had given him a notice in accordance with the provisions contained in U P Act No 13 of 1972 for enhancement of rent of Rs 19 50 Inasmuch as Brij Mohan Das remitted the rent and rent was accepted by the landlord, it clearly showed that a fresh contract of tenancy had come into existence and the decree in question stood adjusted and was rendered non executable The fact that the landlord was, after the decree was made willing to accept Brij Mohan Das as his tenant is also clear from the averments made in the compromise which laid down that the landlord would be entitled to withdraw the amount deposited by Brij Mohan Das in proceedings under Section 7 C of U P Act No 3 of 1947 The case of respondent No 2 in this regard is that the said notice was given by him to Brij Mohan Das inadvertently and that it was wholly wrong to say that he had accepted any rent at the enhanced rate as mentioned in the notice from Brij Mohan Das The respondent further contended that in the circumstances of the case it was not open to the executing court to take notice of this controversy and it could not refuse to execute the decree on the ground that a fresh contract of tenancy had been entered into between the parties after the decree was passed

10 It is absolutely clear that the plea about a fresh contract of tenancy having been entered into between the parties is a plea which in substance amounts to a claim by the judgment debtor that in view of the conduct of the parties the decree in question stands adjusted and is not executable as such Relevant portion of Order 21 Rule 2 of the Code of Civil Procedure runs thus —

(1) Where any money payable under a decree of any kind is paid out of court, or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree and the court shall record the same accordingly

(2) The judgment debtor or any person who has become surety for the judgment debtor also may inform the court of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause on a day to be fixed by the court why such payment or adjustment should not be recorded as certified and if after service of such notice the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified the court shall record the same accordingly

(2A)

(3) A payment or adjustment which has not been certified or recorded as aforesaid shall not be recognized by any court executing the decree

11 In the instant case it is not disputed that none of the parties took any step to as a result of the subsequent conduct of the parties as aforesaid get adjustment of the decree into question recorded under the provisions of Order 21 sub-rule (1) or sub-rule (2) In the result as provided by sub-rule (3) of Order 21 Rule 2 the alleged adjustment even if it took place cannot be taken notice of by the executing court and the execution of the decree in question cannot be refused on that ground

In taking this view I derive full support from a Full Bench decision of the Oudh Chief Court, in the case of Fatmunnisa v Asghar Husain AIR 1928 Oudh 195 and a decision of the Supreme Court in the case of Moti Lal v Mahmood Hasan Khan AIR 1968 SC 1087

12 In the result it is not necessary for me to go into the question as to whether or not after the decree was passed, the parties adopted such conduct whereby a fresh contract of tenancy had come into existence

13 In my opinion none of the grounds raised by the petitioner against execution of the compromise decree is sustainable and the order dated 6th of November 1980 passed by the VI Addl District Judge Lucknow sending the case back to the executing court for executing the decree in accordance with law does not suffer from any error of law or of jurisdiction

14 The petition therefore fails and is dismissed with costs

15 While this judgment was being pronounced learned counsel appearing for the petitioner prayed that he may be granted sometime to vacate the accommodation in question In this regard he undertook that if three months time is allowed to the petitioner she would vacate the accommodation in question and hand over its vacant possession to the landlord so that it may not become necessary for him to formally execute the decree any further In view of this undertaking given on behalf of the petitioner the learned counsel appearing for the respondent stated that he will not execute the decree for a further period of three months from today s date Learned counsel for the petitioner also indicated that the petitioner is conscious of the consequences of not abiding by the undertaking given on her behalf to the Court In this view of the matter it is not necessary to pass necessary orders at the request made by the learned counsel for the petitioner

Petition dismissed

1986 ALJ L J 613

(LUCKNOW BENCH)

D N JHA J

Jagat Narain Singh and others Petitioners v U P S R T C and others Respondents

Criminal Misc Case No 1507 of 1984 and C M Appln No 1373(W) of 1984 D/ 11 10-1985

Constitution of India, Art. 215 — Contempt of Courts Act (70 of 1971), S 2(a)(b) — Wilful disobedience — Writ petition challenging cancellation of select list for appointment of conductors — High Court directing appointments to be made according to names mentioned serially in list — Regional Manager making appointments by bifurcating names at various serial numbers to various depots in region — Held, he is guilty of wilful disobedience and contempt of Court.

(Para 5)

A Mana for Petitioners S K Kalia, for Respondents

ORDER — The facts giving rise to this contempt application arise out in view of certain orders passed in Writ Petition No 2208 of 1980 This writ petition was filed by 249 petitioners challenging the cancellation of the select list prepared by the U P State Road Transport Corporation The U P State Road Transport Corporation had prepared a select list of appointment of conductors and that list was cancelled hence the petitioners filed the writ petition under Article 226 of the Constitution The court admitted the writ petition on 18 8 1980 and a stay order was also granted to the effect that the impugned order of cancellation was stayed Thereafter another application was moved on which on 12 12 1980 an order was passed to the effect that the appointments be made from the names appearing in the select list but these appointments would be subject to the ultimate decision pronounced in the writ petition Thereafter it was brought to the notice of the Court through a miscellaneous application that out of turn appointments were being made by the Regional Manager and thereby claims of persons whose names appeared above were

bypassed The Court on 7th October 1983 passed an order which reads as under :—

Learned counsel for the opposite parties is not available at the moment In view of the order dated 12 12 1980 it is ordered that the appointments if made from the select list shall be made in accordance with merit and the order in which the names appear therein

The Regional Manager kept on making appointments irrespective of this order therefore another miscellaneous application was moved in this Court on which following orders were passed —

Heard learned counsel (sic) are making appointments from the select list itself but not in accordance with the merit and in the order their names appear in that list If that is so the proper course for the petitioners is to move an application under the Contempt of Courts Act or seek such remedy as is considered expedient but the order in question does not require any clarification The earlier orders dated 12 12 1980 and 7 10 83 are clear enough in terms

The application is accordingly rejected

2 It was at this stage that the present proceedings under Contempt of Courts Act were initiated under Article 215 of the Constitution This Court on 23rd October 1984 was pleased to issue notices to Prabhat Shastri Assistant Regional Manager Gonda and Sri M K Saksena Regional Manager Faizabad to show cause why action be not taken against them under the Contempt of Courts Act

3 On receipt of this notice counter affidavit has been filed by Sri M K Saksena and Sri Prabhat Shastri

4 It has been mentioned in the counter affidavit that in pursuance of letter dated 3 6 80 names of Waiting Panel Conductors were sent to various depots namely Sultanpur Faizabad Balrampur and Gonda The names of candidates mentioned from serial Nos 1 to 50 in the waiting list were sent to Sultanpur Depot names of candidates from serial Nos. 51 to 100 were sent to Faizabad Depot names of candidates from serial Nos 101 to 140 were sent to Balrampur Depot and names of candidates from serial Nos. 141 to 180 were sent to Gonda Depot It has further been stated that vide letter dated 10-7 1980 there was further addition in the list and the candidates from serial Nos 181 to 200 were attached to Faizabad Depot candidates from serial Nos 201 to 220 were attached to Gonda Depot candidates from serial Nos 221 to 240 were attached to Sultanpur Depot and candidates from serial Nos 241 to 258 were attached to Balrampur Depot It has been denied that any appointments of conductors has been made from outside the select list It has also been asserted that the waiting list had been prepared depot wise and in the writ petition no challenge is made on that score It has been reiterated that appointments were made strictly in accordance with the panel of waiting conductors which has been prepared depot wise It has also been stated that there was neither any intention to flout the orders of the Court and if the Court finds that the deponent has in any manner flouted the orders of this Court he tenders unqualified apology for the same A rejoinder affidavit has been filed today wherein in para 4 it has been stated that the bifurcation of the list should not have been allowed and the appointments ought to have been made in the order in which the names appeared in the said select list in accordance with the orders of the Hon'ble High Court In para 5 it has been stated that the allegations made in para 6 about which a mention has been made above by me are denied The manner in which the appointments have been made is contrary to the orders of this Court and the same has not been corrected or rectified in spite of the fact that the same was pointed out to the opposite party The names of the juniors were not given in the paragraph under reply and it has also been reiterated that the persons seniors have not been given appointment uptill now as pointed out by the applicants in their application

5 I have heard the learned counsel for the parties at length and gone through the averments and cross averments made by the respective parties in their affidavits Learned counsel for the petitioners vehemently argued that order passed by this Court was in clear terms and it contemplated that appointments strictly should be made in accordance with the serial numbers given out in the select list. It appears that at no stage it was attempted to find out as to how many vacancies existed in various depots in the region Learned counsel for the respondents on the other hand urged

that according to the vacancies received from various depots candidates belonging to various serial numbers were allocated so as to avoid any further delay in the matter of appointments Learned counsel for the petitioners further pointed out that out of 249 petitioners almost all have been accommodated except ten or twelve persons Learned counsel for the opposite parties stated that in fact the cause for grievance has disappeared in view of such a large number of petitioners having been absorbed. I have given my anxious consideration to various aspects involved in the case It is, no doubt, true that the order of the Court was to the effect that appointments should be made in accordance with the names appearing in the select list. This order was clarified by order dated 7 10-1983 that the appointments if made from the select list they shall be made in accordance with the merit and the order in which the names appear therein It is therefore clear that the appointments made by the opposite parties in the region should have been made according to the names mentioned serially in the select list The respondents adopted a peculiar method by bifurcating the names appearing at various serial numbers to various depots in the region Howsoever good the intention of the opposite parties might have been but it was not in accordance with the spirit in which the order had been passed by this Court Unfortunately in this case a counter affidavit had also been filed on behalf of the respondents and not a whisper has been made with respect to the bifurcation made with respect to appointments from the select list The opposite parties are very responsible officers of the said Corporation. They are expected to act with prudence and not like a layman on the street I have no hesitation in observing that the method adopted by the Regional Manager and the Assistant Regional Manager was wholly unwarranted I have no hesitation in also recording a finding that this bifurcation of various candidates was made to circumvent the orders passed by this Court on 7th October 1983 Such a course of action ought to have been checked by the Chairman and the General Manager of the U P State Road Transport Corporation The Regional Manager is subordinate to the General Manager and Chairman and, therefore once the Chairman and the General Manager were party to the writ petition they should have ensured that due respect was shown to the orders passed by this Court. If there was any doubt in the mind of these officers it was always open to them to have approached the Court to get the order rescinded, modified or varied I have gone through the record of the writ petition and I have not been able to find a single application on behalf of the respondents seeking clarification The conduct of these officers smacks of insubordination and indiscipline This Court does not pass orders in vacuo but the orders are passed to safeguard the rights of various petitioners who approach the court for redress In the circumstances it is with utmost impunity that the respondents have tried to circumvent spirit of the order passed by this Court. I have no hesitation in holding that by their action the two officers to whom the notices have been issued have exposed themselves in indulging in wilful disobedience of the order passed by this Court. The orders of bifurcation were passed by the Regional Manager and that too on his own initiative It would, therefore not be proper for this Court to draw any proceeding against the senior officers viz the Chairman and the General Manager or the Deputy General Manager The Regional Manager is therefore guilty of wilful disobedience Unfortunately the architect of the whole mischief is not before this Court as learned counsel for the respondents pointed out that orders were passed by the predecessor of Sri M. K. Saksena in 1980 as appears from letters dated 3-6-80 and 10 7 80 The Assistant Regional Manager has only conveyed the orders passed by the Regional Manager Technically speaking therefore none of the officers before this Court can be held responsible However the conduct of predecessor of Sri M. K Saksena calls for no exoneration I would have initiated proceedings of contempt against him but unfortunately after a lapse of so many years in view of section 20 of the Contempt of Courts Act it is not appropriate to draw any proceedings for contempt It is however expected that the Chairman and the General Manager of the U P State Road Transport Corporation will take suitable action against the erring officer after finding out his name and designation

6 This petition unfortunately on

technical grounds fails and is accordingly dismissed. Notices issued for contempt are accordingly discharged.

Petition dismissed.

1986 ALL. L. J. 616

H. N. SETH, Actg. C. J. AND
N. N. MITHAL, J.

Beedha Singh, Petitioner v. District Registrar Co-operative Societies, Mathura and others, Respondents.

Civil Misc. Writ Petn. No. 3920 of 1976. D/ 7. 1. 1986.

(A) U.P. Co-operative Societies Act (11 of 1966), S. 95-A — Recovery of amount under — Loans advanced by Society can be recovered under S. 95 A — Amount alleged to have been embezzled by official of society cannot be recovered under this section.

(Para 4)

(B) U.P. Co-operative Societies Act (11 of 1966), S. 95 A(1) — Issue of recovery certificate under — Opportunity to place his version before Registrar to be given to debtor — Failure of Registrar to afford such opportunity — Principles of natural justice violated — Recovery proceedings vitiated ((a) U.P.Z.A. and L.R. Rules (1952), R. 236 — (b) Constitution of India, Art. 226.)

It is true that under sub-sec. (1) of S. 95-A the Registrar has been, after an application has been made to him for recovery of arrears of loan advanced by the society empowered to issue a recovery certificate and in his discretion hold such inquiry into the claim made by the society as he thinks fit. This provision, however does not mean that while issuing recovery certificate the Registrar can give a go by to the principles of natural justice. As and when an application is made to the Registrar to recover any balance or instalments of loan from any debtor the Registrar has to in accordance with the principles of natural justice inform the debtor concerned about the claim made by the Society so that the debtor may approach and satisfy him that the amount sought to be recovered from him is not in fact due. It is after the debtor has shown cause that a discretion arises with the Registrar depending upon the circumstances of the case to hold such inquiry in the matter as he thinks fit and proper. Issue of recovery certificate without complying with the provision has the effect of vitiating the entire recovery proceedings including notice issued by Tahsildar under R. 236 of U.P.Z.A. and L.R. Rules (1952). (Para 5)

D.P.S. Chauhan for Petitioner. Standing Counsel for Respondents.

H. N. SETH, Ag. C. J. — Petitioner Beedha Singh was served with a notice dt. 17. 7. 1976 issued by the Tahsildar under R. 236 of the U.P.Z.A. and L.R. Rules (Annexure-4 to the writ petition) informing him that a sum of Rs. 28,605.60P. plus interest plus costs was due from him and that he should appear before him on 24.7.1976. The notice further mentioned that in case the petitioner did not appear as directed necessary orders for his arrest and for attachment and auction of his properties would be issued. Aggrieved the petitioner has approached this Court for relief under Art. 226 of the Constitution.

2. Petitioner claims to be the Cashier of a Co-operative Society known as Sahkari Samiti Ltd. Nagla Chhetti, District Mathura (hereinafter referred to as the Samiti). In its turn the said Samiti is a member of the Zila Sahkari Bank Ltd. (hereinafter referred to as the Bank). Primary object of the Samiti was to advance loans to its members. In due course the Samiti used to forward the loan applications of its members to the Bank and the Bank after scrutinising and sanctioning the same used to transfer the amount applied for to the current account of the Samiti. The Samiti thereafter paid the amount to the concerned members by means of cheques. The petitioner claims that he never took any loan either from the Samiti or from the Bank. However the Assistant Development Officer Co-operative Societies was prejudiced against him. He accordingly lodged a first information report on 30.12.1975 at Police Station Sahabad alleging that the petitioner and the Chairman of the Samiti had embezzled the funds of the Samiti. Thereafter Secretary of the Bank also made a reference under S. 19(2) of the U.P. Agricultural Credit Act, 1973 to the Registrar

Societies Lucknow claiming a sum of Rs 25 529/ from the petitioner Additional Registrar (Consumer Co-operative Societies) acting under R 230 of the Rules made an order dated 8 6 1976 appointing the Deputy Register Societies Agra Region as Arbitrator for deciding the said dispute While the said arbitration case was pending and before any award could be made District Assistant Registrar Co-operative Societies, Mathura, in collusion with the Secretary of the Bank wrote to the Collector requiring him to recover a sum of Rs 28 605 60P from the respondents In pursuance of the said request, the Tahsildar issued the impugned notice on 17 7 1976 The petitioner claims that in the circumstances neither any Bank loan nor any other co-operative dues could be recovered from the petitioner unless and until the Deputy Registrar Societies Agra Region, who had been appointed to act as an Arbitrator for resolving the dispute has given his award

3 Sri Mohansingh Sharma Additional District Co-operative Officer Mathura, has filed a counter affidavit on behalf of the respondents According to him petitioner Beedha Singh had obtained loans from the Samiti and on 30-6 1976 a sum of Rs 1 675/ towards principal amount of short term loan and Rs 2 500/ towards principal amount of mid term loan were due against him Besides this he as Cashier of the Samiti had recovered loans from 13 members of the Samiti on 28-6 1973 and had kept the cash balance amounting to Rs 15 685/ with him He neither deposited the said cash with the Bank nor did he hand it over to the Samiti In due course proceedings under S 95 A of the U P Co-operative Societies Act 1965 were initiated against the petitioner because on record he was found to be a heavy defaulter The respondents further claimed that it was not necessary for them to have obtained an award before initiating proceedings under S 95-A of the Co-operative Societies Act The respondents therefore claim that there is nothing illegal in the recovery sought to be effected by the Tahsildar and assert that the petitioner is not entitled to the relief claimed by him

4 S 95 A of the Co-operative Societies Act runs thus —

95 A Special provision for recovery of certain dues of agricultural society — (1) The Registrar may on an application made by the Society referred to in S 34 or an agricultural credit society for the recovery of arrears of any loan advanced by it or any instalment thereof to any member and on its furnishing a statement of accounts in respect of such loan and after making such enquiries if any as he thinks fit issue a certificate for the recovery of the amount due

(2) A certificate issued by the Registrar under sub-sec (1) shall be final and conclusive proof of the dues which shall be recoverable as arrears of land revenue

In the first place resort can be had to provisions of S 95 A of the Co-operative Societies Act only for recovery of arrears of any loan advanced by a Co-operative society It cannot be utilised for effecting recovery of any amount said to have been embezzled by an official of the Samiti From the counter affidavit it becomes clear that the sum of Rs. 28 605-60P sought to be recovered from the petitioner is made up partly by the alleged amounts of short term and mid term loans of Rs 1 675/ and Rs 2 500/ together with the interest due thereon as also by the sum of Rs 15 685/ the amount said to have been embezzled by him, together with interest etc due thereon Recovery of that portion of the amount mentioned in the impugned recovery certificate which represents the sum of Rs 15 685/ which did not partake the nature of a loan advanced by the Samiti, plus interest thereon cannot be sustained

5 So far as remaining amount is concerned it is true that under sub-sec (1) of S 95 A the Registrar has been after an application has been made to him for recovery of arrears of loan advanced by the society empowered to issue a recovery certificate and to in his discretion hold such inquiry into the claim made by the society as he thinks fit This provision however does not mean that while issuing recovery certificate, the Registrar can give a go-by to the principles of natural justice As and when an application is made to the Registrar to recover any balance or instalments of loan from any debtor the Registrar has to in accordance with the principles of natural justice inform the debtor concerned about the claim made by the Society so that the debtor may approach and satisfy him that the amount sought to be recovered

from him is not in fact due It is after the debtor has shown cause that a discretion arises with the Registrar depending upon the circumstances of the case to hold such inquiry in the matter as he thinks fit and proper In the instant case it is clear that the Registrar has issued the recovery certificate to the Collector without affording any opportunity to the petitioner to place his version before him Consequently there is no escape from the position that the Registrar has while issuing the recovery certificate failed to comply with the principles of natural justice and this defect has the effect of vitiating the entire recovery proceedings including the impugned notice issued by the Tahsildar

6 In the result the petition succeeds and is allowed It is however made clear that the order passed by us shall not stand in the way of the Registrar Co-operative Societies in re-initiating proceedings under S 95 A of the Co-operative Societies Act for recovering any loan due from the petitioner Parties are directed to bear their own costs Stay order dt 10 9 1976 is vacated

Petition allowed

1986 ALL L J 618

(LUCKNOW BENCH)

R C DEO SHARMA J

Baluna Commercial College Aminabad Lucknow Petitioner v The IVth Addl Dist Judge Lucknow and others Respondents

Writ Petn No 6325 of 1982 D/ 12 7 1984

Civil P C (5 of 1908), O 6 R 17 — Eviction proceeding — Amendment of written statement — Plea of non joinder raised at appeal stage, 5 years after commencement of proceeding — Amendment if allowed would have effect of nullifying admissions made by tenant in his written statement — Rejection of amendment — Justified. AIR 1973 Punj & Har 392 Rel on (Para 8)

Cases Referred	Chronological Paras
AIR 1977 All 38	7
AIR 1974 Pat 117	7
AIR 1973 Punj & Har 392	8

LC-AD H7 SS AAJ/SNV

P K Khare for Petitioner Govt Advocate and N K Seth for Respondents

ORDER — The opposite party No 2 Jagdish Prasad Bhargava claiming to be owner of certain premises situate in Aminabad Lucknow made an application u s 21 of the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 against the petitioner M/s Baluna Commercial College Lucknow on the allegations that the landlord wanted the premises for his own use and for the use of his son whom he wanted to settle in the business The contention was that the tenant Baluna Commercial College had other branches to which it could shift its students who come to learn typing in the said college It was also alleged that its partner Prithvi Nath Bhargava had started using part of the premises as residence for the last six months although he had a three storey building in the city which he had been using as his residence also and which he could use even now The claim was resisted by the tenant on the ground that the premises in question had always been used partly for residential and partly for non residential purposes It was contended that the premises were originally let out by late S N Bhargava father of the said P N Bhargava about 50 years back by the then landlord The opposite paty No 2 was said to have purchased the premises later but the tenancy continued as usual The further contention was that late S N Bhargava left three sons namely P N Bhargava S N Bhargava and D N Bhargava Out of these three sons Surendra Nath Bhargava was said to be running a typing school at Faizabad Road Lucknow The other son D N Bhargava was running a similar school at Victoria Street Lucknow and P N Bhargava through whom Baluna Commercial College was sued was running this Commercial College for typing classes in the disputed premises which was partly being used as this residence as well The genuineness of the need of the landlord was denied and it was pleaded that greater hardship would result to the College if it was evicted

2 On a consideration of the entire matter the Presiding Authority allowed the application under section 21 of the Act vide judgment Annexure No 3 to the petition Feeling aggrieved the tenant College preferred an

appeal which is still pending before the learned IV Addl District Judge Lucknow During pendency of the appeal an application for amendment of the written statement was made by the appellant tenant Another similar application was made to amend the memorandum of appeal These applications are Annexure 4 Objections were filed on behalf of the landlord respondent to challenge the proposed amendment The learned Addl. District Judge by his order dated 30-9 1982 (Annexure No 5) rejected the amendment applications on the ground that they were moved with mala fide intentions to delay the proceedings and if allowed would have the effect of nullifying the admissions already made by the tenant in its written statement It is against this order that the present petition under Article 226 of the Constitution has been filed praying for a writ in the nature of certiorari quashing the aforesaid order dated 30-9 1982 and directing the learned Addl District Judge to allow the amendment as prayed vide applications Annexure No 4

3 The main contention of the petitioner was that the premises in question had been let out to late Sri S N Bhargava who left three sons besides a widow etc and consequently they were necessary parties in the eviction proceedings This legal plea was said to have been omitted by inadvertence and lack of proper advice from the counsel although relevant facts were said to have been pleaded in the written statement Another contention raised was that Baluna Commercial College was not a legal entity and could not be sued as such nor could be given the status of a tenant Some documents were also said to have been wrongly relied upon by the learned Addmonal District Judge while rejecting the amendment applications

4 It has not been denied that the opposite-party No 2 is the landlord and he had made an application under Section 21 of U P Act No XIII of 1972 against the tenant M/s Baluna Commercial College The application is Annexure No 1 and clearly indicates that it was made against M/s Baluna Commercial College Aminabad, Lucknow through its partner Sri Prithvi Nath Bhargava A clear averment was made in this application to the effect that the opposite-party was a tenant at Rs 277 00 per month as rent It was also contended in that application that the said opposite-party was having two well settled branches at Victoria Street and Faizabad Road, Lucknow and since P N Bhargava had started residing in a portion of the premises in dispute it appeared that he did not require the premises for running the typing classes Copy of the written statement filed in the proceedings is contained in Annexure No 2 para 1 of the application to the effect that M/s Baluna Commercial College was a tenant was admitted though subject to additional pleas In the additional pleas undoubtedly it was stated that the premises were let out by the erstwhile landlord to late S N Bhargava 50 years back and that the said S N Bhargava died leaving three sons and a widow It was however stated in paras 27 and 28 of the written statement that the late S N Bhargava had been running the typing school under the name and style of Baluna Commercial College and after his death two of his sons were running typing schools at Faizabad Road and Victoria Street Lucknow while the third son P N Bhargava through whom the tenant was sued was running the typing school in the disputed premises In para 32 of that written statement it was mentioned that the opposite party namely M/s Baluna Commercial College had established the typing school in the disputed premises 50 years back and a portion thereof was being used by P N Bhargava who was running the said school. In Para 37 it was stated that the family of P N Bhargava will be ruined and thrown on the street and the established school shall also be ruined if the application u/s 21 was allowed Para 38 mentioned that the said P N Bhargava who was running the typing school had no other source of income except the income from this school and therefore if the opposite-party namely the college was evicted P N Bhargava and his family members would suffer irreparable loss

5 Learned counsel for the opposite-party landlord placing reliance on the aforesaid averments contended that the amendment application was rightly rejected by the court below as permitting the amendment to be made would have the effect of wiping out the admissions made by P N Bhargava and Baluna Commercial College to the effect that it was P N Bhargava alone who was concerned with the running of the College whereas his other

two brothers were running similar other typing schools elsewhere in the city It is also apparent that no plea whatsoever was taken in the written statement to the effect that there were any other persons interested in the college or in the tenancy who were necessary parties to these proceedings For the first time during the pendency of the appeal it was sought to be raised that other heirs of late S N Bhargava were necessary parties and in their absence the application was not maintainable

6 Petitioner s learned counsel has laid emphasis on the point that neither M/s Baluna Commercial College could have the status of a tenant in the eyes of law nor could it be sued as such and consequently all the heirs of late S N Bhargava should have been impleaded It will appear from the averments made in the application and in the written statement referred to earlier that from the very beginning the landlord s contention was that M/s Baluna Commercial College was the tenant and this fact had not been denied except making an averment that the original landlord had let out the premises to late S N Bhargava 50 years back The fact however remains that even though the contract of tenancy might have taken place with late S N Bhargava yet it was clearly for M/s Baluna Commercial College The purpose of the lease was running of the typing school under the aforesaid name and style of Baluna Commercial College None of the other two brothers of P N Bhargava came forward to be made parties to the proceedings before the Prescribed Authority and naturally in the light of the averments made in the written statement they had no concern with the premises in dispute or the College as they were running their separate institutions at other two places in the city It has not been denied that the rent was paid in the name of M/s Baluna Commercial College and reference to that effect had been made in the judgment (Annexure No 5) Learned counsel for the petitioner contended that notice should not have been taken of certain rent receipts sought to be filed by the landlord but the judgment does not mention that any rent receipts (not on record) had been looked into What has been mentioned is that the objections filed before the learned Prescribed Authority vide paper No C 30 by P N Bhargava clearly contained an admission that he was running the typing school under the name and style of Baluna Commercial College and that the other two brothers were running typing schools at Fazabad Road and Victoria Street Reference has been made to paras 2 and 3 of the aforesaid objections contained in paper No C 3 which must have been before the appellate court in connection with the appeal against the order of the Prescribed Authority In para 3 of the said objections P N Bhargava was said to have stated that the landlord had been accepting rent from him with the knowledge that he alone was carrying on business in his own right in the disputed premises It has not been denied by the petitioner that these averments were contained in his objection paper No C 30

7 Learned counsel for the petitioner has placed reliance on a Division Bench decision of this Court in Ramesh Chandra v Gopeshwar Prasad Sharma, AIR 1977 All 38 and on its strength it was contended that the heirs of late S N Bhargava became tenants in common and should have been impleaded The facts in that case were entirely different as the tenant was being sued in his personal capacity and not as a Firm etc In the instant case Baluna Commercial College appeared to be a proprietorship Firm and was being sued in the Firm name This fact was clearly mentioned in the application for proposed amendment A reference to Order XXX Rule 10 C P C will indicate that a person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a Firm name That being so P N Bhargava could be sued in the name and style of M/s Baluna Commercial College It was he alone according to his own admissions who was running and owning this institution and neither he had concern with the institutions being run by his brothers nor they were said to be in any manner interested in the institution being run by him in the premises in dispute The clear averments made in the written statement will bear it out A reference to R 4 of Order XXX C P C will also indicate that if late S N Bhargava was running Baluna Commercial College in the premises and now Sri P N Bhargava was running the same it was not necessary to bring on record the heirs of late

S N Bhargava and the proceedings could be continued in the name of M/s Baluna Commercial College A similar matter came up for consideration before Patna High Court in Firm Vijay Nipani Tobacco House v Sarwan Kumar AIR 1974 Pat 117 It was held that the person concerned could be sued in the Firm name or in any other trade name even if it was a proprietorship concern of an individual and in the circumstances it was not necessary to mention through whom the said Firm or concern was being sued Any such description was rather redundant

8 That the amendment sought was not only highly belated but clearly mala fide is apparent from the fact that the proceedings had commenced in 1977 and only five years later this plea was sought to be taken and that too during the pendency of an appeal. That the amendment was not moved bona fide is also clear from the fact that clear averments have been made in the written statement to the effect that it was P N Bhargava alone who was concerned with Baluna Commercial College and that his other two brothers had nothing to do with it nor he had anything to do with other two typing schools being run by his brothers The purpose of the tenancy cannot be dissociated and it is obvious that the premises in dispute were taken for running a typing school in the name of Baluna Commercial College To take the plea of non joinder at such a late stage and that too in the face of the clear averments made in the written statement denying concern of others with these premises or the tenancy was clearly motivated by a desire to prolong the proceedings on these technical grounds which even on merits had no substance The learned Addl District Judge was therefore justified in rejecting the application for amendment Learned Counsel for the opposite-party No 2 (landlord) has relied upon Ishar v Sudesh Kumar AIR 1973 Punj and Hary 392 in support of the contention that an amendment of this nature if allowed would convert the defence into a totally different and inconsistent type of plea Although the facts in that case were different but in principle it cannot be denied that permitting the proposed amendment would wipe out the effect of admissions made by the tenant in the written statement, and would unnecessarily bring on record persons, who according to the own showing of the tenant are persons having no concern with the tenancy or the premises in question In this view of the matter the amendment was rightly rejected and the petition is without merit

9 The petition is accordingly dismissed with costs to the opposite-party No 2

Petition dismissed

1986 ALL L J 621

= AIR 1986 Supreme Court 868

(From Allahabad)

E S VENKATARAMIAH AND M P THAKKAR JJ

Civil Appeals Nos 569-70 of 1986 D/ 14-2 1986

State Bank of India. Appellant v M/s Saksaria Sugar Mills Ltd and others Respondents

Sugar Undertakings (Taking Over of Management) Act (49 of 1978), S 7 — Notification under — Secured liabilities due to Bank excluded by notification while suspending all liabilities under contract to which notified undertaking was party — Suit against notified sugar undertaking and guarantors filed by bank for recovery of amount due — Suit would remain unaffected by notification. Judgment of Allahabad High Court Reversed. (Contract Act (9 of 1872), S 128)

Where the notification issued by Central Government under S 7(1)(b) read with sub-s (2) although declared that the operation of all obligations and liabilities arising out of all contracts etc to which the notified sugar undertaking was party would remain suspended for certain period but it excluded all secured liabilities due to a Bank or Financial institution from its operation a suit filed by a Bank against a notified sugar mill and its guarantors for recovery of amount due from the mill would remain unaffected by the notification Moreover even when a notification is issued under S 7(1)(b) suspending the operation of any agreement or assurances of property to which a notified sugar undertaking or the person owning was a party any proceeding against the guarantor would remain unaffected by the issuance of

such a notification Judgment of Allahabad High Court Reversed AIR 1969 SC 297 Ref to (Paras 7 8)

Cases Referred Chronological Paras

AIR 1969 SC 297 (1969) 1 SCR 628 7

Dr Y S Chitale Sr Advocate with Mr S A Shroff Advocate with him for Appellant Mr Yogeshwar Prasad Sr Advocate and Mr S R Srivastava Advocate with him for Respondents

VENKATARAMIAH, J — These appeals by special leave are filed against the order dated May 25 1984 passed by the High Court of Allahabad in Civil Revision No 136 of 1982 and the order dated February 22 1985 in C M A No 644(M) of 1984 on the file of that Court

2 The appellant, the State Bank of India had allowed cash credit facility to M/s Saksaria Sugar Mills Ltd respondent No 1 herein on the security of the goods produced at the sugar factory belonging to respondent No 1 Respondent No 1 had also deposited in the Bombay office of the State Bank of India on February 2 1962 by way of equitable mortgage the title deeds of its immovable properties to secure the amount advanced under the said cash credit facility Respondents Nos 2 to 5 M/s Gov nd Ram and Brothers Shri K G Saksaria, Shri G L Vaid and Shri R K Saksaria had agreed to be the guarantors for the repayment of any amount due from respondent No 1 under the said cash credit account Since there was default in repayment of the amount due under the said cash credit account the State Bank of India instituted a suit in Suit No 18 of 1980 on the file of the Additional District Judge Gonda for recovery of a sum of Rs 54 89 822 99 as on March 6 1980 against respondents Nos 1 to 5 who were described as defendants Nos 1 to 5 in the plaint praying for a decree in terms of O 34 R 4 C P C and further consequential directions In the meanwhile by virtue of an order made by the Central Government under the Sugar Undertakings (Taking Over of Management) Act 1978 (Act No 49 of 1978) (hereinafter referred to as the Act) the sugar undertaking belonging to respondent No 1 had been taken over by the Central Government and one Raghubir Singh had been appointed as the Custodian of the said undertaking The State Bank of India therefore impleaded Raghubir Singh and the Union of India also as defendants Nos 6 and 7 in the suit In the suit respondents Nos 1 to 5 pleaded inter alia that the trial Court had no territorial jurisdiction to try the suit and that the suit was not maintainable and at any rate the suit was liable to be stayed in view of the provisions of the Act The trial Court had framed two issues arising out of the above pleas The defendants filed an application before the trial Court on September 6 1982 requesting it to decide first the above two issues relating to its jurisdiction and its competence to proceed with the suit After hearing the parties the trial court found that it had jurisdiction to try the suit as the properties given as security were situated within its jurisdiction and that there was no impediment to proceed with the trial notwithstanding the fact that the management of the mill of respondent No 1 had been taken over by the Central Government under the Act Aggrieved by the said decision of the trial court respondent No 1 filed a revision petition in Civil Revision No 136 of 1982 before the High Court of Allahabad The High Court allowed the revision petition holding that the trial of suit in so far as relief No 1 namely the prayer for decree for Rs 54 89 822 99 against respondents Nos 1 to 5 was concerned was liable to be stayed by virtue of the provisions of the Act The High Court, however directed that the trial of the suit with regard to all other matters may proceed Since the only relief prayed in the suit was in respect of the recovery of Rs 54 89 822 99 from respondents Nos 1 to 5 in accordance with the provisions of O 34 R 4 C P C and that had been stayed the State Bank of India applied to the High Court by filing an application No C M A 644(M) of 1984 for clarification as to what other matter could be tried in the suit That application was rejected by the High Court by its order dated February 22 1985 holding that the provisions of O 34 R 4 C P C were quite clear and it was for the court below to proceed in accordance with law The High Court was of opinion that the order needed no further clarification Aggrieved by the orders passed on revision in Civil Revision No 130 of 1982 and the order passed in C M A No 644(M) of 1984 the State Bank of India has filed this appeal by special leave

3 The only question canvassed before us by the parties relates to the question whether the trial of the suit should be stayed by reason of the provisions of the Act. There is no dispute about the territorial jurisdiction of the trial court It is contended by respondents Nos 1 to 5 that since the management of the sugar undertaking belonging to the respondent No 1 had been taken over by the Central Government under the Act the trial of the suit filed against respondent No 1 for recovery of any amount due from the sugar undertaking was liable to be stayed It is no doubt true that the Central Government has taken over the management of the sugar undertaking belonging to the respondent No 1 by issuing a notification under S 3 of the Act and has appointed a custodian under S 5 thereof The material part of S 7 of the Act which is relevant for the purposes of this case reads thus

7 Power of Central Government to make certain declarations — (1) The Central Government may if it is satisfied in relation to a notified sugar undertaking that it is necessary so to do in the interests of the general public with a view to preventing the fall in the volume of production of the sugar industry it may by notification declare that —

(a)

(b) the operation of all or any of the contracts assurances of property agreements settlements awards standing orders or other instruments in force (to which such sugar undertaking or the person owning such undertaking is a party or which may be applicable to such sugar undertaking or person) immediately before the date of issue of the notification shall remain suspended or that all or any of the rights privileges, obligations and liabilities accruing or arising thereunder before the said date shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified in the notification

(4) Any remedy for the enforcement of any right privilege obligation or liability referred to in clause (b) of sub-section (1) and suspended or modified by a notification made under that sub-section shall in accordance with the terms of the notification remain suspended or modified and all proceedings relating thereto pending before any Court tribunal officer or other authority shall accordingly remain stayed or be continued subject to such adaptations, so however that on the notification ceasing to have effect —

(a) any right, privilege obligation or liability so remaining suspended or modified shall become revived and enforceable as if the notification had never been made

(b) any proceeding so remaining stayed shall be proceeded with subject to the provisions of any law which may then be in force from the stage which had been reached when the proceedings became stayed

4 Clause (b) of S 7(1) of the Act which is extracted above empowers the Central Government to issue a notification declaring that the operation of all or any of the contracts assurances of property agreements settlements awards standing orders or other instruments in force (to which a notified sugar undertaking or the person owning such undertaking is a party or which may be applicable to such sugar undertaking or person) immediately before the date of issue of the notification shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified in the notification Sub-section (4) of S 7 of the Act provides that any remedy for the enforcement of any right privilege obligation or liability referred to in clause (b) of sub-section (1) of S 7 and suspended or modified by a notification made under that sub-section shall in accordance with the terms of the notification remain suspended or modified and all proceedings relating thereto pending before any Court tribunal, officer or other authority shall accordingly remain stayed or be continued subject to such adaptations so however that on the notification ceasing to have effect (a) any right privilege obligation or liability so remaining suspended or modified shall become revived and enforceable as if the notification had never been made and (b) any proceeding so remaining stayed shall be proceeded with subject to the provisions of any law which may then be in force from the stage which had been reached when the proceedings became stayed

5 A reading of clause (b) of sub-sec (1) and sub-section (4) of S 7 of the Act makes it clear that it is only on the issuance of a notification by the Central Govt under S 7(1)(b) containing the necessary declaration that the operation of all or any of the contracts etc entered into by the notified sugar undertaking which are referred to in the said notification shall remain suspended or that all or any of the rights privileges obligations and liabilities accruing or arising thereunder before the said date shall remain suspended The Act does not provide that on a sugar undertaking being notified, automatically all the contracts assurances of property or agreements etc entered into by such sugar undertaking would become unenforceable It states that only those contracts assurances of property or agreements etc which are specified in the notification issued under S 7(1)(b) (not all contracts) would become suspended and the rights privileges obligation and liabilities arising under them would not be enforceable In the instant case the Central Government has issued notifications from time to time specifying the contracts assurances of property agreements etc the operation of which would stand suspended or stayed during the period of its management of the sugar undertaking in question. The latest notification issued in that connection is dated March 21 1984 It reads thus

S O 181 (E) Whereas the Central Government is satisfied that in relation to the Saksaria Sugar Mills Limited manufacturing sugar at Babhanan in the district of Gonda in the State of Uttar Pradesh being the notified sugar undertaking it is necessary so to do in the interests of the general public with a view to preventing the fall in the volume of production of the sugar industry

Now therefore in exercise of the powers conferred by clause (b) of sub-section (1) read with sub-section (2) of section 7 of the Sugar Undertakings (Taking Over of Management) Act, 1978 (49 of 1978) and in continuation of the notification of the Government of India in the Ministry of Food and Civil Supplies (Department of Food) No S O 196(E) dated the 22nd March 1983 the Central Government hereby declares that the operation of all obligations and liabilities accruing or arising out of all contracts, assurances of property agreements, settlements, awards standing orders or other instruments in force immediately before the 28th March, 1980 (other than those relating to secured liabilities to banks and financial institutions) to which the said sugar undertaking or the person owning the said sugar undertaking is a party or which may be applicable to the said sugar undertaking or that person shall remain suspended for a further period from 28th March 1984 to 12 3 1985

6 The above notification clearly sets out the contracts assurances of property etc the operation whereof is suspended or stayed The Central Government has made a declaration by that notification to the effect that the operation of all obligations and liabilities accruing or arising out of all contracts, assurances of properties agreements settlements, awards standing orders or other instruments in force immediately before the 28th March 1980 (other than those relating to secured liabilities to banks and financial institutions) to which the said sugar undertaking of the person owning the said sugar undertaking is a party shall remain suspended up to March 12 1985 It is very clearly stated in the said notification that it does not apply to secured liabilities due to banks and financial institutions The liability involved in the suit was a secured liability and the creditor is the State Bank of India Yet the High Court surprisingly has proceeded to hold that the operation of the contract assurance of property and agreement in respect of the undertaking and its property entered into with the State Bank of India is to be suspended and the suit in respect of them should be stayed in view of the Act and the notification issued thereunder

7 It is unfortunate that the High Court erred in overlooking words other than those relating to secured liabilities to banks and financial institutions referred to in the notification which had the effect of excluding the mortgage in favour of the State Bank of India from the scope of the notification issued under S 7 of the Act The High Court further erred in not noticing that even when a notification is issued under S 7(1)(b) of the Act suspending the operation of any agreement or assurances of property to which a notified sugar undertaking or the person owning is a party any proceeding against the guarantor

would remain unaffected by the issuance of such a notification Under S 128 of the Indian Contract Act 1872 save as provided in the contract the liability of the surety is co extensive with that of the principal debtor The sureties thus became liable to pay the entire amount Their liability was immediate and it was not deferred until the creditor exhausted his remedies against the principal debtor The Act does not say that when a notification is issued under S 7(1)(b) of the Act the remedies against the guarantors also stand suspended In any event the order of the High Court against respondents Nos 2 to 5 is untenable See Bank of Bihar Ltd v Damodar Prasad (1969) I SCR 620 (AIR 1969 SC 297)

8 Since in the instant case all secured liabilities due to a bank or a financial institution are excluded from the operation of the notification the suit against respondent No 1 as well as respondents Nos 2 to 5 remained unaffected by the notification issued by the Central Government The order of the High Court in the Civil Revision is therefore liable to be set aside We accordingly set aside the orders passed by the High Court against which these appeals are filed and direct the trial Court to proceed with the suit The appeals are accordingly allowed Respondents Nos 1 to 5 shall pay the costs of the appellant

Appeals allowed

1986 ALL. L J 625

(SUPREME COURT)

(From Allahabad)

E S VENKATARAMIAH AND M P THAKKAR JJ

Civil Appeal No 2774 (NCE) of 1985 D/ 25-4-1986

Azhar Hussain Appellant v Rajiv Gandhi Respondent

(A) Representation of the People Act (43 of 1951), Ss. 83, 86, 87 — Election petition — Dismissal of — It can be for non-compliance of provisions of S 83 i e for failure to incorporate in petition material facts and particulars relating to alleged corrupt practice — Power to dismiss can be exercised at threshold. (Civil P C (5 of 1908), O 7, R. 11)

ED/ED/C291/86/VVG

An election petition can be and must be dismissed under the provisions of Civil P C if the mandatory requirements enjoined by Section 83 to incorporate the material facts and particulars relating to alleged corrupt practice in the election petition are not complied with The Code of Civil Procedure applies to the trial of an election petition by virtue of section 87 of the Act Since CPC is applicable the Court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) Therefore that Section 83 does not find a place in Section 86 of the Act which authorises dismissal of election petitions in certain contingencies does not mean that powers under the CPC cannot be exercised An election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Civil P C and it is settled law that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all

(Paras 9 11)

The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence and not at the threshold is thoroughly misconceived and untenable (Para 12)

Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action or the power to direct the concerned party to strike out unnecessary scandalous frivolous or vexatious parts of the pleadings Such being the position in regard to matters pertaining to ordinary Civil litigation there is greater reason why in a democratic set up in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towatowards the Nation the controversy is set at rest at the earliest if the facts of the case and the law so warrant

(Para 12)

(B) Representation of the People Act (43 of 1951), Ss. 83, 123(7) — Election petition — Corrupt practice — Material facts and particulars — Allegation that gazetted officer appeared on Govt. controlled news media and made speech praising elected candidate

— Material facts and particulars that must be stated.

Where the corrupt practice alleged in the election petition was that a Gazetted Officer appeared on the Govt controlled news media and made a speech praising the elected candidate and all that was stated was that services of the gazetted officer were procured and obtained by the elected candidate his agents and other persons with the consent of the candidate with a view to assist the furtherance of the prospects of his election it could not be said that essential facts which would clothe the petition with a cause of action and which will call for an answer from the returned candidate were pleaded It was not mentioned as to who procured or obtained the services of the gazetted officer in what manner he obtained the services and what were the facts which went to show that it was with the consent of the elected candidate Nor was it shown which if any facts went to show that the speech was in furtherance of the prospects of the elected candidate s election The petition also did not disclose the exact words used in the speech or the time and date of making such a speech Unless the relevant or offending passage from the speech is quoted it cannot be said what exactly was said and in what context and whether it was calculated to promote the election prospects of the elected candidate (Para 18)

(C) Representation of the People Act (43 of 1951), Ss. 83, 123(7), 87 — Corrupt practice — Statement of material particulars — Allegation that objectionable slogans had been painted — Names of workers employed by the elected candidate or his agents who painted slogans not mentioned in petition — It amounts to failure to incorporate material particulars — Petition liable to be dismissed.

(Para 21)

(D) Representation of the People Act (43 of 1951), Ss. 83, 123(7) — Corrupt practice — Statement of material particulars — Allegation that returned candidate gave insinuating speeches — Time, date and place of speeches not given — Exact extract of speeches not quoted — Allegation that statements were in order to prejudice election of a candidate also absent — Held, essential ingredients of corrupt practice were not spelled out.

(Para 25)

(E) Representation of the People Act (43 of 1951), Ss 83, 123(7) — Corrupt practice of displaying objectionable poster in constituency — Copy of the poster not produced — Names of workers of the returned candidate who put up poster and facts spelling out consent of returned candidate or his agent absent — Petition suffers from lack of material facts

(Para 28)

(F) Represetation of the People Act (43 of 1951), Ss. 83, 123 — Corrupt practice — Distribution by returned candidate of book containing objectionable statements in constituency — No averment to show that book was published with consent or knowledge of returned candidate — Facts showing that distribution of book was with consent of returned candidate, missing — Offending paragraphs not quoted in election petition — Petition suffers from lack of material particulars. **(Para 31)**

(G) Representation of the People Act (43 of 1951), Ss. 83, 123(4) — Corrupt practice — Distribution of pamphlets relating to personal character of a candidate — No averment in petition as to by whom, where and to whom they were distributed — Petition does not disclose cause of action for want of material particulars **(Paras 34, 35)**

(H) Representation of the People Act (43 of 1951), S 123 — Corrupt practice — Distribution of pamphlet casting aspersions on personal character of a candidate — Particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and facts to indicate returned candidate s consent to such distribution absent — Pleadings do not disclose a cause of action **(Para 38)**

(I) Representation of the People Act (43 of 1951), Ss. 83, 87, 81 — Civil P C (1908), O 7 R 11 — Election petition filed on last day of limitation — Petition bereft of material facts and particulars relating to alleged corrupt practices — High Court dismissing it under O 7 R 11 as not disclosing any cause of action instead of rejecting it — Held fact, that High Court used expression dismissed instead of rejected did not make any difference as no fresh petition could have been filed within limitation. **(Para 40)**

(J) Representation of People Act (43 of 1951), S 123 — Corrupt practices — Expression is repulsive and offensive — Its replacement by neutral and unoffensive expression disapproved practices suggested. (Para 41)

Cases Referred	Chronological	Paras
AIR 1985 SC 89		20
AIR 1984 SC 309		20
AIR 1979 SC 234	(1979) 2 SCC 221	17
AIR 1977 SC 744	(1977) 1 SCC 511	11
AIR 1972 SC 515	(1972) 2 SCR 742	10 14 18
(1970) 3 SCC 239	1970 UJ (SC) 753	20 21 25 28 35
AIR 1969 SC 734	(1969) 3 SCR 217	14 18
AIR 1969 SC 1201	(1969) 3 SCC 238	11

THAKKAR, J :— An election petition having been dismissed on the ground that it did not comply with the mandatory requirement to furnish material facts and particulars enjoined by S 83 of the Representation of the People Act and that it did not disclose a cause of action the election petitioner has appealed to this Court under S 116-A of the Representation of the People Act of 1951 (Act)

2 The respondent was elected as a Member of the Lok Sabha from the Amethi Constituency of Uttar Pradesh in the general elections held on 24th December 1984 under Section 15 of the Act Having secured the highest votes (3 65 041) the respondent was declared as elected on December 29 1984 On 12th February 1985 the last date for challenging the election the appellant (who claims to be a worker of the Rashtriya Sanjay Manch) an elector from the Amethi constituency filed the election petition giving rise to the present appeal

3. The election of the returned candidate respondent herein was challenged on the ground of alleged corrupt practices as defined by the Act Seventeen grounds set out in para 4 (I to XVII) of the election petition were called into aid in support of the challenge The respondent upon being served instead of filing a written statement, raised preliminary objections to the maintainability of the petition on a number of grounds inter alia contending that the petition was lacking in material facts and particulars and was defective on that account and that since it did not disclose any cause of action it deserved to be dismissed The appellant on his part filed two applications for amendment of the election petition (None of which was for supplying the material facts and particulars which were missing) All these applications were heard together and were disposed of by the judgment under appeal upholding the preliminary objection raised on behalf of the Respondent and dismissing the election petition Hence this appeal

4 In a democratic polity election is the mechanism devised to mirror the true wishes and the will of the people in the matter of choosing their political managers and their representatives who are supposed to echo their views and represent their interest in the legislature The results of the Election are subject to judicial scrutiny and control only with an eye on two ends First to ascertain that the true will of the people is reflected in the results and second to secure that only the persons who are eligible and qualified under the Constitution obtain the representation In order that the true will is ascertained the Courts will step in to protect and safeguard the purity of Elections for if corrupt practices have influenced the result, or the electorate has been a victim of fraud or deception or complusion on any essential matter the will of the people as recorded in their votes is not the free and true will exercised intelligently by deliberate choice It is not the will of the people in the true sense at all And the Courts would therefore it stands to reason be justified in setting aside the election in accordance with law if the corrupt practices are established So also when the essential qualifications for eligibility demanded by the constitutional requirements are not fulfilled the fact that the successful candidate is the true choice of the people is a consideration which is totally irrelevant notwithstanding the fact that it would be virtually impossible to re enact the elections and reascertain the wishes of the people at the fresh elections the time scenario having changed And also notwithstanding the fact that elections involve considerable expenditure of public revenue (not to speak of private funds) and result in loss of public time and accordingly there would be good reason for not setting at naught the election which reflects the true will of the

people lightly In matters of election the will of the people must prevail and Courts would be understandably extremely slow to set at naught the will of the people truly and freely exercised If Courts were to do otherwise the Courts would be pitting their will against the will of the people or countermanding the choice of the people without any object aim or purpose But where corrupt practices are established the result of the election does not echo the true voice of the people The Courts would not then be deterred by the aforesaid considerations which in the corruption scenario lose relevance Such would be the approach of the Court in an election matter where corrupt practice is established But what should happen when the material facts and particulars of the alleged corrupt practices are not furnished and the petition does not disclose a cause of action which the returned candidate can under law be called upon to answer? The High Court has given the answer that it must be summarily dismissed The appellant has challenged the validity of the view taken by the High Court

5 Learned counsel for the appellant has urged four submissions in support of this appeal viz

A — Since the Act does not provide for dismissal of an election petition on the ground that material particulars necessary to be supplied in the election petition as enjoined by Section 83 of the Act are not incorporated in the election petition inasmuch as Section 86 of the Act which provides for summary dismissal of the petition does not advert to Section 83 of the Act there is no power in the Court trying election petitions to dismiss the petition even in exercise of powers under the Code of Civil Procedure

B — Even if the Court has the power to dismiss an election petition summarily otherwise than under Section 86 of the Representation of the People Act the power cannot be exercised at the threshold

C — In regard to seven grounds of challenge embodied in paragraph 4 of the election petition viz I II (i ii & iii) XIII XIV and XV the High Court was not justified in dismissing the petition

D — Even if the powers under the Code of Civil Procedure can be exercised by the Court hearing election petitions worse comes to worse an election petition may be rejected under Order 7 Rule 11 of the Code of Civil Procedure but in no case can it be dismissed

GROUND A

6 In order to understand the plea a glance at Sections 83 and 86 (1) in so far as material is called for —

83 Contents of petition — (1) an election petition —

a) shall contain a concise statement of the material facts on which the petitioner relies

b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each of such practice and

c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 (5 of 1908) for the verification of pleadings

Provided that where the petitioner alleges any corrupt practice the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition

86 Trial of election petitions — (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 82 or section 117

Explanation — An order of the High Court dismissing an election petition under this sub section shall be deemed to be an order made under clause (a) of section 98

7 The argument is that where the legislature wanted to provide for summary dismissal of the election petition the legislature has spoken on the matter The intention was to provide for summary dismissal only in case

of failure to comply with the requirement of Sections 81 82 and 117[1] and not Sec 83

8 The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions non

(contd on Col 2)

1

81 Presentation of petitions — (1) An election petition calling in question any election may be presented on one or more of the grounds specified in (sub section(1)) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within fortyfive days from but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and the dates of their election are different the latter of those two dates

Explanation In this sub section elector means a person who was entitled to vote at the election to which the election petition relates whether he has voted at such an election or not

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition

82 Parties to the petition — A petitioner shall join as respondents to his petition —

(a) where the petitioner in addition to claiming declaration that the election of all or any of the returned candidate is void claims a further declaration that he himself or any other candidate has been duly elected all the contesting candidates other than the petitioner and where no such further declaration is claimed all the returned candidates and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition

117 Security for costs — (1) At the time of presenting an election petition the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition

(2) During the course of the trial of an election petition the High Court may at any time call upon the petitioner to give such further security for costs as it may direct

compliance with which entails dismissal of the election petition it follows that non compliance with the requirements of Section 83 (1) even though mandatory do not have lethal consequence of dismissal Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of section 87 of the Act [1] Since CPC is applicable the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus —

Order 6 Rule 16 Striking out pleadings — The Court may at any stage of the proceedings order to be struck out or amend any matter in any pleading —

a) which may be unnecessary scandalous frivolous or vexatious or

b) which may tend to prejudice embarrass or delay the fair trial of the suit or

c) which is otherwise an abuse of the process of the Court

Order 7 Rule 11 Rejection of plaint — The plaint shall be rejected in the following cases —

a) where it does not disclose a cause of action

xxx xxx xxx

1

87 Procedure before the High Court — (1) Subject to the provisions of this Act and of any rules made thereunder every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure 1908 (5 of 1908) to the trial of the suits

Provided that the High Court shall have the discretion to refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings

(2) The provisions of the Indian Evidence Act 1872 (1 of 1872) shall subject to the provisions of this Act be deemed to apply in all respects to the trial of an election petition

9 The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised

10 There is thus no substance in this point which is already concluded against the appellant in Hardwari Lal v Kanwal Singh (1972) 2 SCR 742 (AIR 1972 SC 515) wherein this Court has in terms negatived this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A N Ray J who spoke for the three judge Bench

The allegations in paragraph 16 of the election petition do not amount to any statement of material fact of corrupt practice It is not stated as to which kind or form of assistance was obtained or procured or attempted to obtain or procure It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure It is not stated in what manner the assistance was for the furtherance of the prospects of the election The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action

Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act It was emphasized that Section 83 did not find place in section 86 Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure 1908 to the trial of the suits A suit which does not furnish cause of action can be dismissed

11 In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with This Court in Samant s case (1969) 3 SCC 238 (AIR 1969 SC 1201) has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all So also in Udhav Singh s case (1977) 1 SCC 511 (AIR 1977 SC 744) the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) An election petition therefore can be and must be dismissed if it suffers from any such vice The first ground of challenge must therefore fail

GROUND B

12 Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold In substance the argument is that the court must proceed with the trial record the evidence and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised With respect to the learned counsel it is an argument which it is difficult to comprehend The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of

the court and exercise the mind of the respondent The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action Or the power to direct the concerned party to strike out unnecessary scandalous frivolous or vexatious parts of the pleadings Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading The Courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence if the Court is satisfied that the action would terminate in view of the merits of the preliminary point of objection The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources will not impede their future work and they are free to undertake and fulfil other commitments Such being the position in regard to matters pertaining to ordinary Civil litigation there is greater reason for taking the same view in regard to matters pertaining to elections So long as the sword of Damocles of the election petition remains hanging an elected member of the Legislature would not feel sufficiently free to devote his whole hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office and instead of resolving their problems he would be engaged in a campaign to establish that he has in fact been duly elected Instead of discharging his functions as the elected representative of the people he will be engaged in a struggle to establish that he is indeed such a representative notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls He will have not only to win the vote of the people but also to win the vote of the Court in a long drawn out litigation before he can whole heartedly engage himself in discharging the trust reposed in him by the electorate The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity He may even have occasions to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him The fact that an election petition calling into question his election is pending may in a given case act as a psychological fetter and may not permit him to act with full freedom Even if he is made of stern metal the constraint introduced by the pendency of an election petition may have some impact on his sub conscious mind without his ever being or becoming aware of it Under the circumstances there is greater reason why in a democratic set up in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation the controversy is set at rest at the earliest if the facts of the case and the law so warrant Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law To wind up the dialogue to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the

case warrant exercise of such powers at the threshold is to contend that the legislature conferred these powers without point or purpose and we must close our mental eye to the presence of the powers which should be treated as non-existent The Court cannot accede to such a proposition The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled

GROUND C

13 The learned counsel for the election petitioner has very fairly contended that out of the 17 grounds embedded in the election petition grounds other than the seven mentioned by him cannot be pressed into service and that he would restrict his submissions to these seven grounds It is therefore unnecessary to advert to grounds other than the seven grounds which have been urged in support of this petition We will accordingly proceed to consider the plea urged to the effect that in regard to the aforesaid alleged corrupt practices the High Court was not justified in dismissing the election petition

14 Before we deal with these grounds seriatim we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression material facts and particulars which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act

(1) What are material facts and particulars?

Material facts are facts which if established would give the petitioner the relief asked for The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition [(1969) 3 SCR 217 (AIR 1969 SC 734) — Manubhai Nandlal Amarsey v Popatlal Manilal Joshi]

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded [(1972) 2 SCR 742 (AIR 1972 SC 515) — Hardwari Lal v Kanwal Singh]

a) mode of assistance

b) measure of assistance and

c) all various forms of facts pertaining to the assistance

(3) In the context of an allegation as regards procuring obtaining abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following

(a) kind or form of assistance obtained or procured

(b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election [AIR 1972 SC 515]

(4) The returned candidate must be told as to what assistance he was supposed to have sought the type of assistance the manner of assistance the time of assistance the persons from whom the actual and specific assistance was procured [AIR 1972 SC 515]

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered AIR 1972 SC 515 (supra)

(6) The election petitioner must state with exactness the time of assistance the manner of assistance the persons from whom assistance was obtained or procured the time and date of the same all these will have to be set out in the particulars (AIR 1972 SC 515) (supra)

15 And having restated the settled position in regard to the content of the expression material facts the time is now ripe to proceed to deal with the grounds on which the election of the returned candidate is assailed seriatim

GROUND I

16 Alleged corrupt practice as incorporated in Ground I reads thus —

The election of the respondent is liable to be set declared void because the respondent was guilty of the following corrupt practice as defined under Section 123(7) of the

Representation of the People Act 1951 read with Section 100(1)(b) and 100(d)(ii) of the said Act the said corrupt practice was committed with the consent of the respondent returned candidate and of other workers of his with his consent In any event it was committed by the respondent s agents in the interests of the returned candidate and the said corrupt practice has materially affected the result of the election in so far as it concerns the returned candidate One M H Beg who at one time was the Chief Justice of the Supreme Court of India and is a close friend of the Nehru family and is personally known to and friendly with the respondent appeared on the government controlled news media and made a speech praising the respondent and comparing his entry into politics as the birth of new Arjuna the insinuation being that the opposition were the Kauravas His appearance on the television was relayed day after day on the government controlled media Television sets had been installed in practically every election office of the respondent in Amethi constituency and throughout the election campaign thousands and thousands of voters were exposed to the television appearance and speech of the said Mr Beg Mr Beg is a gazetted officer being the Chairman of the Minorities Commission His services were procured and obtained by the respondent his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent s election Mr Beg was seen and heard on the television as late as 21st December 1984 Propaganda about Mr Beg s was done particularly amongst the members of the Muslim community Apart from being gross misuse of the office of Chairman of the Minorities Commission the same constitutes a gross corrupt practice under the election law

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?

17 The High Court observed —

The contention of the learned counsel for the respondent is that there is no pleading that Mr Beg was a person in the service of the government as according to the learned counsel the Chairman of the Minorities Commission is not a person in the service of the government Learned counsel for the petitioner says that the petitioner had specifically pleaded that Mr Beg was a gazetted officer which implies a pleading that he was in the service of the government Learned counsel for the respondent says that simply because a person is a gazetted officer it is not necessary that he must also be a government servant because the appointment of so many persons is gazetted and yet some of them may not be government servants Be that as it may the fact remains that the petitioner had not stated in the pleading that Mr Beg was a person in the service of the government as specifically required by Section 123(7) of the Act This requirement is a requirement of the statute and is therefore a material fact within the meaning of Sec 83(1)(a) of the Act Similarly the statement that the services of Mr Beg were procured and obtained by the respondent his agents and other persons with the consent of the respondent is clearly vague as discussed above It was incumbent upon the petitioner to specify which of the three alternatives he meant to plead in particular it was necessary for him to indicate the names of the respondent s agents and other persons to enable the respondent to know that what it was the case which he was expected to meet Learned counsel for the respondent further contended that the petitioner has not set out the exact words used by Mr Beg in his speech the expression a speech praising the respondent and comparing his entry into politics as the birth of new Arjuna is not what Mr Beg might have said In the case of K M Mani v P J Antony (1979) 2 SCC 221 (AIR 1979 SC 234) the speech made by a Police Officer exhorting the electors in an election meeting to support a candidate was questioned It was held that a mere statement of the making of the speech or exhortation was not enough and that transcript of the alleged speech or contemporaneous record of the points or at least substance of the speech should have been made available In these circumstances the proposed pleading in this paragraph does not set out the material facts and therefore constitutes an incomplete cause of action under Section 123 (7) of the Act

Whether the High Court was right in taking the aforesaid view

18 The averments contained in paragraph 4 pertaining to Ground No 1 do not satisfy

the test prescribed in Manubhai Amarsey v Popatlal Manilal Joshi (AIR 1969 SC 734) and Hardwari Lal v Kanwal Singh (AIR 1972 SC 515) (supra) The most important test which remained unsatisfied is as regards the omission to satisfy in what manner the assistance was obtained and procured by the election candidate for promoting the prospects of his election All that has been stated is

His services were procured and obtained by the respondent his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent s election

It is not mentioned as to who procured or obtained the services of Shri Beg in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent Unless these essential facts which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in Manubhai Nandlal Amarsey v Popatlal Manilal Joshi (AIR 1969 SC 734) (supra) it cannot be said that the petition discloses a cause of action in regard to this charge In the absence of these material facts and particulars the Courts could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition It is not sufficient to show that a Government servant had appeared on the public media to praise one of the candidates It must also be shown that the assistance of the Government servant was obtained either by the respondent or his agent or by any other person with the consent of the election candidate or his election agent The averments made in the petition do not show (i) who had obtained or procured the assistance from Shri Beg (ii) how he had obtained or procured the assistance of Shri Beg and (iii) how it was said that it was with the consent of the respondent or his election agent Nor is it shown which if any facts went to show that it was in furtherance of the prospects of the respondent s election In the absence of material facts and particulars in regard to these aspects the petition would not disclose the cause of action The High Court was therefore perfectly justified in reaching this conclusion The petition also does not disclose the exact words used in the speech or the time and date of making such a speech Now unless the relevant or offending passage from the speech is quoted it cannot be said what exactly Shri Beg had said and in what context and whether it was calculated to promote the election prospects of the respondent Be that as it may inasmuch as these material facts and particulars to show that the services of Shri Beg were procured by some one with the consent of the respondent or his election agent are not there the averments pertaining to the charge do not disclose a cause of action Unless the nexus between the appearance of Shri Beg on the media and the prior consent of the respondent or his election agent in regard to what he was going to say and the purposes for which he was going to say is set out in the material particulars it cannot be said that it disclosed a cause of action and the test laid down in Manubhai Nandlal s case as also Hardwari Lal s case is satisfied The High Court was therefore justified in taking the view that it has taken We may in passing mention a point made by learned counsel for the respondent It was submitted that the averment must also mention whether the interview was a live one telecast after the date of filing of the nomination If it was one recorded prior to the said date it may not be of any consequence This argument also requires consideration but we do not propose to rest our conclusion on this aspect as it is not necessary to do so

GROUND II (i)

19 It has been set out in para 4 of the petition in the following terms —

Throughout the petitioner s constituency in Amethi worker employed by the respondent and/or his agents painted available space with two slogans The first one was BETI HAI SARDAR KI DESHI KE GADDAR KI Literally translated it implied one of the candidates i e Mrs Maneka Gandhi is the daughter of a Sikh and that Sikhs including her father are traitors The second slogan was MANEKA TERA YE ABHIMAN BANANE NA DENGE KHALISTAN Literally translated it means Maneka this is your illusion We will not allow Khalistan to be set up The clear insinuation was that the said candidate i e Mrs Maneka Gandhi had a vision of Khalistan being set up that her election would mean the creation of Khalistan and that she was a supporter of the Khalistan demand

These slogans were also painted on some of the vehicles used by the respondent's workers during the course of campaign On every occasion those slogans were uttered and broadcast from vehicles and from microphones used at public meetings and from the Congress (I) party office in the constituency of the respondent The use of such slogans was the pet theme of almost every speech delivered in the constituency during the election campaign The use of these objectionable slogans and posters harmful to newspapers and the respondent must have known to them But for the fact that they had been used with his consent he would have taken some steps to repudiate them or have their use discontinued Photographs of walls with the said slogans along with certificates will be filed as Exhibit A

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?

20 In this context the High Court observed —

The contention of learned counsel for the respondent is that this pleading suffers from lack of material facts because the names of the workers employed by the respondent or his agents who painted the slogans or uttered them in speeches or broadcast from the vehicles have not been indicated It is pointed that the allegation regarding the painting of slogans is vague because it is stated to have been done by workers and/or his agents signifying that the petitioner himself did not know whether painting work was done by workers employed by the respondent or by his agents or by both I have already pointed out that this kind of statement is vague and embarrassing and therefore is contrary to the concept of material facts In the case of Nihal Singh v Rao Birendra Singh (1970) 3 SCC 239 it was held that the allegation that at meetings in different villages speeches were given on 5th and 12th May 1968 was vague in the absence of a specification of date and place of each meeting and evidence could not be permitted to be led in the matter The allegation of consent of the respondent to the paintings of the slogans or to their utterances in the speeches of his workers is only inferential There is a distinction between consent and connivance The pleading is in the nature of a pleading of connivance and not of consent which is not enough vide the case of Charan Lal Sahu v Giani Zail Singh AIR 1984 SC 309 In the case of Surinder Singh v Hardial Singh AIR 1985 SC 89 it has been indicated in para 37 that consent is the life line to link up the candidate with the action of the other person which may amount to corrupt practice unless it is specifically pleaded and clearly proved and proved beyond reasonable doubt the candidate cannot be charged for the action of others

Whether the High Court was right in taking the aforesaid view

21 There is a glaring omission to mention the names of the workers said to have been employed by the respondent or his agents who have allegedly painted the slogans So also no material particulars are given as regards the vehicles on which the said slogans have been said to have been painted There are no material particulars or facts We are of the view that inasmuch as the material facts and particulars in regard to this alleged practice were not mentioned and the High Court was justified in taking the view that it had taken The averments contained in regard to this charge also do not satisfy the test laid down by the various decisions of this Court adverted hereinabove A Division Bench of this Court in Nihal Singh v Rao Birendra Singh (1970) 3 SCC 239 speaking through Bhargava J has observed —

The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses The pleading in fact was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point (see para 8)

22 The principle laid down is that the pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars and that inasmuch as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence the High Court should

not even have permitted evidence on that point In other words no amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action In the light of the aforesaid principle laid down by the Supreme Court which has held the field for more than 15 years the High Court was perfectly justified in reaching the conclusion called into question by the appellant

GROUND II (ii)

23 Alleged corrupt practice as incorporated in Ground II (ii) reads as under –

The respondent himself toured the constituency on the 12th and 13th December 1984 On the night of the 11th as he was entering the constituency he was stopped by the petitioner s workers at Inhauna Kashah The walls there bore these slogans The petitioner along with other workers stopped the respondent s vehicle and drew his attention to the so vulgar slogans The respondent saw nothing objectionable in these slogans. He was requested to give instructions to the authorities that these should be removed and he contemptuously had the workers dismissed and dispersed He declared that their leader (referring to Mrs Maneka Gandhi) deserves nothing better The respondent delivered several speeches during the course of his visit In none of these speeches did he repudiate these slogans He repeatedly referred to the assassination of his mother and to the Anandpur Resolution saying that the opposition had encouraged secessionist and violent elements and that the opposition conclaves in the past had given rise to the emotion that had eventually taken the Prime Minister his mother s life He insinuated that the assassins were Sikhs and then asked the audience to make up their minds whether they still wanted somebody from the same community to succeed in the election

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?

24 The High Court observed

Learned counsel for the respondent correctly contends that these averments again are vague because they do not describe the petitioner s workers who stopped the respondent or furnish details of the speeches in which the respondent was expected to repudiate the slogans He has also correctly urged that the so-called request if any to the respondent for instructions to the authorities was misconceived and did not establish any obligation of the respondent to direct the authorities under any provision of the election law

Whether the High Court was right in taking the aforesaid view

25 In this case also no time date and place of the speeches delivered by the respondent have been mentioned No exact extracts from the speeches are quoted Nor have the material facts showing that such statements imputed to the respondent were indeed made been stated No allegation is made to the effect that it was in order to prejudice the election of any candidate Or in order to further the prospects of the election of the respondent The essential ingredients of the alleged corrupt practice have thus not been spelled out So far as the meeting is concerned the principle[1] laid down in Nihal Singh case (1970 (3) SCC 239) (supra) discussed in the context of the charge contained in ground II (i) is attracted The view taken by the High Court is therefore unexceptionable

GROUND II (iii)

26 The alleged corrupt practice as incorporated in ground II (iii) reads as under –

In line with the respondent s speeches his workers with the knowledge and consent of the respondent and other agents of the respondent entrusted with the task of conducting the election campaign caused a poster of Hindi and Urdu to be affixed in all prominent places throughout the constituency The said poster was in fact a page of the Blitz newspaper of 30-6 84 called the Id Special The Id that year was on 1st July 1984 The

---

1 The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses The pleading in fact was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point

heading of the said poster which was underlined in red alleged conspiracy between the leader of the petitioner party and Bhindaranwale Photographs of Mrs. Maneka Gandhi and Bhindaranwale appeared separately on left and right hand corners of the said advertisement A literal English translation of the poster is given below — A copy of the said poster will be filed as Exhibit B The poster also purported to carry a fascimile copy of a letter dated the 10th September 1983 purporting to be addressed by Shri Kalpnath Sonkar a member of the Rashtriya Sanjay Manch to Shri Bhindaranwale The letter is a forgery and that it was forged was publicly stated by alleged author of the alleged letter and a criminal case is pending in the matter thereof The letter was fabricated expressly for the express purpose of showing —

(a) that Mrs Maneka Gandhi was in secret conspiracy with Bhindaranwale

(b) that Mrs Maneka Gandhi illegally supplied arms to Bhindaranwale and other secessionists and terrorists

(c) that Maneka Gandhi was in sympathy with the creation of Khalistan and the division of the country and the use of violence to achieve that end

The said allegations are totally false and fabrication The respondent knew them to be false He did not and could not believe them to be true That complaints were made to the District authorities about the obnoxious wall paintings and posters to which the attention of the respondent had been drawn The said authorities while clearly admitting the R. S M. election agents and workers as well as to the press correspondents that they were objectionable took no steps to remove or obliterate them Prominent newspapers and press correspondents continued to draw attention to those slogans and posters but the respondent or his workers took no steps whatsoever to stop their exhibition, circulation and use The respondent condoned and sanctioned the exhibition and circulation of this poster He did nothing to stop the use thereof by his workers The wall painting mentioned above and this poster were paid out of Congress (I) Party s These were therefore his own expenses sanctioned by himself Cutting of some of the newspaper reports will be filed as Exhibit C

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?

27 The High Court held

It appears to me that if an averment of fact is an essential part of the pleading, it must be considered to be an integral part of the petition If such an averment is not actually put in the election petition, the petition suffers from the lack of material facts and therefore the statement of cause of action would be incomplete If it is stated in the election petition either in the body of the petition itself or by way of annexure but its copy is not furnished to the respondent, the election petition would be hit by the mischief of Section 81(3) read with Section 86(1) of the Act. In my opinion, the reference to the poster and its proposed translation in the election petition which was never incorporated into it, are material facts under Section 83(1)(a) of the Act and their absence cannot now be made good by means of an amendment. The pleading as it stands and even if it were permitted to be amended would suffer from lack of cause of action on this material fact and, therefore is liable to be struck out. The newspaper cutting are not used by the petition as containing fact. but only as evidence to the extent amendment is allowed "

Whether the High Court was right in taking the aforesaid view?

28 It will be noticed that in the election petition it has been mentioned that a copy of the poster would be subsequently filed and the cuttings of some newspaper reports would also be filed later on The election petitioner sought an amendment to delete the averments on both these aspects. The High Court rejected the prayer in regard to poster (Ex B) but granted the prayer in respect of the cuttings. The High Court has taken the view that the poster was claimed to be an integral part of the election petition and since it was not filed (much less its copy furnished to the respondent) the pleading suffered from infirmity and non compliance with Section 83(1) read with Section 86(1) of the Act. Non-filing of the poster is fatal to the election petition as in the absence thereof the petition suffers from lack of material facts and therefore the statement of cause of action would be incomplete

Nothing turns on the fact whether or not the words a copy of the said poster would be filed as Exhibit B are allowed to be retained in the election petition or are deleted as prayed for by the appellant. The fact remains that no copy of the poster was produced It must also be realized that the election petitioner did not seek to produce the copy of the poster but only wanted a reference to it deleted so that it cannot be said that the accompaniments were not produced along with the election petition The fact remains that without the production of the poster the cause of action would not be complete and it would be fatal to the election petition inasmuch as the material facts and particulars would be missing So also it could not enable the respondent to meet the case Apart from that the most important aspect of the matter is that in the absence of the names of the respondent's workers or material facts spelling out the knowledge and consent of the respondent or his election agent the cause of action would be incomplete So much so that the principle enunciated by this Court in Nihal Singh s case (1970 (3) SCC 239) (supra) would be attracted. And the Court would not even have permitted the election petitioner to lead evidence on this point. The High Court was therefore fully justified in taking the view that it has taken

GROUND XIII

29 Alleged corrupt practice as incorporated in ground No XIII reads as follows —

That, in the later half of June 1983 a family friend of the respondent and a very close and intimate friend of the respondent s mother Shri Mohammed Yunus, wrote a book called Son of India A committee called the Son of India committee published the book It was printed by Virendra Printers of Karol Bagh, New Delhi. The Son of India committee consisted among others of Minister Narasimha Rao M P the Executive President of the Congress (I) Shri Kamlapati Tripathi, Ministers Sitaram Kesari and Naram Dutt Tiwari The book starts with a brief comment by the editor entitled Pathakon Se Do Battem (short dialogue with the readers) and is followed by a 22 page story of the two brothers, namely the respondent and his late brother Shri Sanjay Gandhi. This book was written printed and published with the knowledge consent and assistance of the respondent The respondent by himself by the party by his workers and through other persons acting with the consent of the respondent and/or his election agent distributed the said book in the Amethi constituency during the entire course of the election campaign The said book contains statements which are false and which to the knowledge of the respondent were believed to be false The said statements are in relation to the personal character and conduct of Mrs Maneka Gandhi The said statements were reasonably calculated to prejudice the prospects of the petitioner s election All statements made in relation to the character or conduct of the petitioner are totally false In particular the petitioner says that the following statements made therein answer the description aforesaid and constitute a gross corrupt practice within the meaning of Section 123(4) of the Representation of the People Act, 1951 The said corrupt practice has been committed by the respondent the returned candidate It has also been committed by his election agents and by other persons with the consent of the respondent and/or his election agents A copy of the booklet entitled Son of India will be filed as Exhibit P It has also been committed in the interest of the respondent returned candidate and by his agents The said corrupt practice renders the election of the respondent liable to be set aside and declared void, as a result of Section 100(1)(b) of the said Act Reproduced herebelow are some of the false statements contained in the said book Son of India relating to the personal character and conduct of Mrs Maneka Gandhi one of the candidates in the said election

(a) That Mrs Maneka Gandhi utilised her marriage to the late Sanjay Gandhi as a means of enriching herself

(b) She is spending so much money on herself and her various activities Where does all this money come from? The insinuation is that the petitioner is possessed of wealth corruptly made which is now being spent

(c) That she misused her marriage to increase her influence and amass wealth

(d) That her married life was one of constant friction with her husband

(e) That due to her foolish action her husband became more and more unhappy It

is as a result of domestic unhappiness created by her that Sanjay Gandhi to drown his sorrow took to flying His flying in the plane which ultimately crashed and in which he died as a direct result of her misconduct

(f) That she was totally indifferent to her husband s death

(g) That she left her mother in law s home because she was denied a Parliamentary Seat

(h) That she had no love for her husband and she should be ashamed of herself

Why the High Court held that material facts and particulars are absent and had not disclosed cause of action?

30 The High Court observed as under —

In this connection learned counsel for the respondent has also referred to the averment that the said statement were reasonably calculated to prejudice the prospects of the petitioner s election Similarly he refers to statements (b) contained in the paragraph wherein an observation is made that the insinuation is that the petitioner is possessed of wealth corruptly made The contention is that these averments would apply to Smt. Maneka Gandhi personally as if she was the petitioner and not to Ch Azhar Hussain the present petitioner Ch. Azhar Hussain was not contesting the election he was only a voter The statement that the petitioner's election were calculated to be prejudiced or that the petitioner was possessed of wealth corruptly made" was wholly inapplicable to the petitioner Ch Azhar Hussain and could certainly apply to Smt. Maneka Gandhi. It is, therefore urged that this pleading is not made by the petitioner himself and therefore cannot be looked into Realising the error the petitioner has applied for amendment to the petition to mention that the statements were calculated to prejudice the leader of the petitioner s political party and that regarding possession of wealth, it related to the leader of the petitioner's political party namely Smt. Maneka Gandhi. It appears to me that, as pointed out by the learned counsel for the respondent the proposed amendment changes the entire nature of the pleading in this paragraph and is not merely a clerical mistake It is an indication of the fact that the pleading has been made without an application of mind and it seems to me that it is hit by one of the principles set forth in Section 86(5) of the Act for which an amendment must not be allowed. I am not satisfied that the proposed amendment could justly be allowed and therefore must fail. On a consideration of all the matters, I would hold that the pleading in this paragraph is not sustainable suffers from lack of material facts as a result of non application of mind of the petitioner himself and is irrelevant."

Whether the High Court was right in taking the aforesaid view —

31 There is no averment to show that the publication was made with the knowledge or consent of the returned candidate when the book was published in June 1983 In fact, in 1983 there was no question of having acted in anticipation of the future elections of 1985 and in anticipation of the respondent contesting the same In the election petition even the offending paragraphs have not been quoted The petitioner has set out in paragraphs (a) to (h) the inferences drawn by him or the purport according to him. This apart the main deficiency arises in the following manner The essence of the charge is that this book containing alleged objectionable material was distributed with the consent of the respondent Even so strangely enough even a bare or bald averment is not made as to

i) whom the returned candidate gave consent

ii) in what manner and how and

iii) when and in whose presence the consent was given,

to distribute these books in the constituency Nor does it contain any material particulars as to in which locality it was distributed or to whom it was distributed, or on what date it was distributed. Nor are any facts mentioned which taken at their face value would show that there was consent on the part of the returned candidate Under the circumstances it is difficult to comprehend how exception can be taken to the view taken by the High Court

GROUND XIV

32 Alleged corrupt practice as incorporated in ground No. XIV reads thus —

That during the same campaign in the Amethi constituency another booklet in Hindi with the photograph of the respondent on the cover page under the title Rajiv Kyon (Why Rajiv) purporting to be written by one Jagdish Pyush was distributed in lacs by the respondent, his election agent and a large number of other persons with the consent of the respondent and/or his election agent On the third page of the said pamphlet occurs the following sentences

Amethi is the place where Rajiv s younger brother did his principal work If Maneka was in sympathy with the desires of the late Sanjay Gandhi, why would she not run an orphanage in Amethi Why would she not serve the helpless poor and why would she not employ her vast assets (Arbon Ki Sampati) (of hundreds of crores) in some constructive work The same conspiratorials and mischievous elements who had painted the hands of Sanjay Gandhi and Maneka yellow and the same foreign powers disruptionists and enemies of the country who got Meneka out of her family home, are now wanting to make a Razia Sultan or Noor Jahan and seeing her in those roles These people (obviously including the petitioner) not merely desired the partition of Smt. Gandhi s family not only the partition of Amethi and Rai Bareilly but also partition of the people and partition of the country The very people who want another Pakistan in India, who want Khalistan are the very persons who are tinkering with the progress of Amethi and cannot permit the widow of Sanjay Gandhi to be in the company of the country s loafers because no family of India can permit its daughters or daughters in law and the widow of its loved one to go about behaving like a vagabond. She is in acute distress about her late husband s property She is conducting her politics in his name She is abusing her mother in law and her brother-in-law Having kicked her family she is now doing her dirty deeds (Gulchhade Uda Rahai Nai") in a house which costs Rs 80 000 annual rent Social reformers had not advocated the pursuit of ambitions by widows and in the same vein the pamphlet proceeds to state in other context thereafter that the petitioner moved about in the company of traitors She has exploited the person of her innocent child for political purpose For power and pleasure, Maneka can do anything The petitioner says that the entire trend of this pamphlet and the propaganda conducted on the basis thereof casts serious aspersions on the personal character of the candidate of his party It accuses her of being possessed of corrupt wealth disregard of her husband s wishes breaking of family ties for political ambitions not conforming to the standard of conduct expected of a widow keeping company with questionable characters capable of any immoral action for pleasure of the body and even exploiting her innocent child for her own advancement. All these aspersions were extensively published with the knowledge and consent of the respondent, as well as, with the knowledge and consent of his election agent and by other persons with the consent of the respondent and/or his election agent The publisher of this pamphlet is an important political worker of the Respondent He is a member of his party and campaigned extensively for the respondent and his company The publication printing and circulation thereof and the propaganda based thereon was in any event, done by the agents of the respondents and in the interest of the election of the respondent Each of these statements is false The respondent and others who made or repeated the same believed them to be false At any rate they did not believe them to be true These statements are in relation to the personal character or conduct of the candidate and they are in relation to her candidature These statements were reasonably calculated to prejudice the prospects of her election The election of the respondent is thus liable to be declared void under section 100(1)(b) This was also liable to be set aside under section 100(1)(d)(ii) inasmuch as the result of the election in so far as it concerned the returned candidate has been materially affected by this gross corrupt practice A copy of the booklet Rajiv Kyon will be filed as Ex Q

Why the High Court held that material facts and particulars are absent and had not disclosed a cause of action?

33 In this connection the High Court observed —

While undoubtedly these allegations relate to the personal character and conduct of Smt. Maneka Gandhi, the elements of law required by Section 123(4) of the Act have not been

specifically set out As already held it was the duty of the petitioner to make his choice of the particular person with whose consent the statement was made or distributed According to the petitioner himself it was not made by the respondent but by one Jagdish Piyush The petitioner instead of pinpointing the particular person who distributed the booklet or with whose consent it was distributed made a broad and vague statement that it was done by the respondent his election agent a large number of other persons with his consent and/or with the consent of his election agent The date time and place of distribution the names of the agents or persons who distributed it have not been indicated and therefore the pleading is vague and cannot be sustained

Whether the High Court was right in taking the aforesaid view —

34 On a scrutiny of the averments made in the election petition it is evident that it is not pleaded as to who has distributed the pamphlets when they were distributed where they were distributed and to whom they were distributed in whose presence they were distributed etc etc Pleading is ominously silent on these aspects It has not even been pleaded that any particular person with the consent of the respondent or his election agent distributed the said pamphlets (In fact it has been stated by the learned counsel for the respondent that no election agent had been appointed by the respondent during the entire elections)

35 The pleading therefore does not spell out the cause of action So also on account of the failure to mention the material facts the Court could not have permitted the election petitioner to adduce evidence on this point It would therefore attract the doctrine laid down in Nihal Singh s case (1970(3) SCC 239) and there would be nothing for the respondent to answer

Ground No XV

36 Alleged corrupt practice as incorporated in ground No XV reads as under —

That during the course of the campaign the respondent his election agent and his party brought into existence a propaganda committee to further the prospects of the respondent s election This committee was called the Amethi Matdata Parishad Through the agency of this Committee the respondent his election agent and others with their consent and knowledge caused another pamphlet to be printed published and circulated during the entire election campaign under the title How do Intelligent people think? who is an obstacle in the progress of Amethi ? The said pamphlet inter alia contains the following statements —

That Maneka Gandhi is surrounded only by antisocial elements She was also seen in the company of terrorists Her whole campaign is based on money In my view Maneka seems to have a big hand in the fire of Punjab Maneka has no merit of her own If she had anything in her it would have come out before her marriage to Sanjay If she had any desire for leadership or service of the country she would have co-operated with her husband. Politics is for her a pursuit of pleasure (Shaukiya Dhandha) Therefore she is conducting her politics on the strength of people like Haji Masthan and Virendra Shah. A woman who could not protect the honour of a vast country like India. Maneka is the destroyer of the country

The petitioner says that the entire trend of this pamphlet and the propaganda conducted on the basis thereof casts serious aspersions on the personal character of a candidate Each of these statements is false to the knowledge of the respondent and others The printing publication and circulation of the said pamphlet and the propaganda based thereon was in any event done by the agents of the respondent and in the interests of the election of the Respondent. These statements are in relation to the personal character or conduct of a candidate and they are in relation to her candidature These statements were reasonably calculated to prejudice the prospects of the petitioner s election The election of the respondent is thus liable to be declared void under section 100(1)(b) This was also liable to be set aside under Sec 100(1)(d)(ii) inasmuch as, the result of the election in so far as it concerned the returned candidate has been materially affected by this gross corrupt practice

In this pamphlet, the same Jagdish Piyush who is referred to in the pamphlet in the preceding paragraphs is one of the

contributors and in that contribution, he has referred to his publication mentioned in the previous paragraphs

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?

37 The High Court observed —

The petitioner has set out specific statements from this pamphlet commenting adversely on the character and conduct of Smt. Maneka Gandhi where inter alia, her association with terrorists and other persons of questionable antecedents was set out It has been stated that these statemetns are false to the knowledge of the respondent and others and the pamphlet was distributed by the agents of the respondent in the interest of the election of the respondent and that the result, so far as the respondent is concerned has been materially affected by the corrupt practice Here also the petitioner has made an omnibus statement of the printing publication and circulation of the pamphlet by the respondent his election agent and others with their consent and knowledge without trying to pinpoint the particular person who had done so The places, dates where the pamphlets were distributed have also not been indicated It was necessary for the petitioner to do under the law as set out above The pleading is therefore vague embarrassing and lacks in material facts and therefore must fail The petitioner s prayer for an amendment to delete the proposal to file a copy of the pamphlet is allowed as it is evidence and not integral part of the petition

Whether the High Court was right in taking the aforesaid view?

38 In view of the doctrine laid down in Nihal Singh s case (1970(3) SCC 239) (supra) as early as in 1970 the High Court was perfectly justified in taking the view that no cause of action was made out For in the absence of material particulars as to who had printed published or circulated the pamphlet, when, where and how it was circulated and which facts went to indicate the respondent s consent to such distribution the pleading would not disclose a cause of action There would be nothing for the respondent to answer and the matter would fall within the doctrine laid down in Nihal Singh s case (supra) The learned counsel for the appellant is unable to show how the Court has committed any error in reaching this conclusion

39 Thus there is no substance in the contentions urged by the learned counsel for the appellant in order to assail the judgment of the High Court in the context of the seven charges of alleged corrupt practices which the learned counsel wanted to call into aid in support of his submission

Last submission (ground D supra)

40 Counsel for the appellant has taken exception to the fact that the High Court has dismissed the election petition in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure notwithstanding the fact that under the said provision if the petition does not disclose a cause of action it can only be rejected (and not dismissed) The contention urged by the learned counsel would have had some significance if the impugned order was passed before the expiry of the period of limitation for instituting the election petition In the present case the election petition was filed on the last day on which the election petition could have been presented having regard to the rigid period of limitation prescribed by Sec 81 of the Act It could not have been presented even on the next day Such being the admitted position it would make little difference whether the High court used the expression rejected or dismissed It would have had some significance if the petition was rejected instead of being dismissed before the expiry of the limitation inasmuch as a fresh petition which contained material facts and was in conformity with the requirements of law and which disclosed a cause of action could have been presented within the period of limitation In this backdrop the High Court was perfectly justified in dismissing the petition And it makes no difference whether the expression employed is dismissed or rejected for nothing turns on whether the former expression is employed or the latter There is thus no valid ground to interfere with the order passed by the High Court and the appeal must accordingly fail

41 But before the last word is said one more word needs to be said The expression corrupt practice employed in the Act would appear to be rather repulsive and offensive Can it perhaps be replaced by a neutral and unoffensive expression such as disapproved

practices ? Since this aspect occurred to us and there is an occasion to do so we hint at it and rest content at that

42 And now the last word The appeal is dismissed No costs throughout

Appeal dismissed

1986 ALL L J 643

(LUCKNOW BENCH)

D N JHA J

Vijai Narain Dube Applicant v State of U P Opposite Party

Criminal Misc Case No 3119 of 1985 D/ 7 11 1985

U P Coal Control Order (1977), Clauses 4 to 7 — Violation of order — No prosecution can be initiated (Essential Commodities Act (10 of 1955), S 3)

The provisions of Coal Control Order relating to obtaining a licence have been retained only on considerations of revenue and not in order to regulate the supply and distribution of the coal or the bricks nor with a view to controlling their prices In view of such intention of the Government it is evident that no prosecution can be initiated against an accused person for any violation of the Coal Control Order There can be no question of blackmarketing if there is no price control on the commodity If the commodity is available in sufficient quantity for free sale there is no question of maintaining supplies of commodities through the agency of Government Since there could be no restrictions on the quantity of the slack coal that may be stored at a particular point of time no offence would be made out for storing slack coal without a licence (Paras 5 6)

S C Shukla for Applicant.

ORDER — Vijai Narain Dubey has directed this petition under Sec 482 Cr P C for quashing of the investigation launched on the basis of first information report D/ 20th March 1985 on the basis of which crime case No 99 of 1985 had been registered purporting to be for a charge under S 3/7 of the Essential Commodities Act, P S Lalganj District Pratapgarh

2 The petitioner is running a brick kiln On the basis of some information on 20th March 1985 the Supply Inspector lodged an F I R under Sec 3/7 of the Essential Commodities Act against the applicant alleging that there was no valid licence available in the premises with Triveni Prasad Ojha and he could not produce the same when he demanded In absence of any licence (sic) from brick kiln have resulted in violation of the Coal Control Order 1977 and a report under Sec 3/7 of the Essential Commodities Act, 1955 was registered The Inspector further found that three metric tonnes of slack coal was lying at the site and hence there was further violation of the said Order

3 I have heard the learned counsel for the parties and gone through the various provisions of the said Act and the allegations contained in this petition Admittedly this is a case where slack coal was being used by the owner at the brick kiln

4 The purpose of the Essential Commodities Act 1955 as disclosed through its preamble is to provide in the interest of the general public for the control of the production supply and distribution of and trade and commerce in certain commodities Clause (a) of Sec 2 of the Act defines the term essential commodities Apart from nominating certain commodities sub-cl (xi) of cl (a) confers power upon the Central Government to declare a commodity to be an essential commodity for the purposes of the Act Section 3 of the Act confers power upon the Government to i sue order for regulating or prohibiting the production supply and distribution of an essential commodity Such an order may be issued when the Government is of opinion that it is necessary or expedient to do so for maintaining or increasing supplies of any essential commodity or for securing its equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or for the efficient conduct of military operations Sub-sec (2) of Sec 3 provides that an order issued under sub-sec (1) of Sec 3 may provide for regulating by licences permits or otherwise the production or manufacture of any essential commodity In exercise of this power the State Government with the concurrence of the Central Government, issued the Uttar Pradesh

Coal Control Order 1977 Clause 4 of this Order provides that no person shall import coal and carry on business as a Coal Agent or as Coal Depot Holder or run a brick kiln with coal except under and in accordance with the terms and conditions of a licence issued under this Order Under this provision a licence is required for carrying on business in coal and also for running a brick kiln with coal Clause 6 provides that the licence shall be valid up to 31st March next following the date on which it is issued and may be renewed from year to year for a maximum period of three years This clause also provides the fee that an applicant for the licence is required to pay For wholesale trade the fee fixed is Rs 60/ while for retail trade the fee fixed is Rs 30/ For running a brick kiln with coal the fee is Rs 45/ There are other fees also prescribed by this clause but the amount does not exceed Rs 60/ in any case Under cl. 7 a Coal Agent is required to furnish security for the sum of Rs 1000/ while a Coal Depot Holder is required to furnish security in the sum of Rs 200/ Rs 300/ is the amount of security fixed in respect of brick kiln Clause 8 requires the licensee to acquire full quota of the coal allotted to him unless he is prevented by sufficient cause to the satisfaction of the District Magistrate This clause also requires the licensee to comply with any direction that may be issued to him from time to time by the State Coal Controller or the District Magistrate in regard to import purchase sale storage or distribution of coal or for running a kiln with coal and sale and distribution of bricks as applicable to him Under sub-cl (2) of cl 8 the Coal Agent is required not to sell at a rate higher than those fixed from time to time by the District Magistrate Clause 13 confers power upon the State Coal Controller or Licencing Authority or any Inspector with a view to securing compliance with the order to enter upon and inspect any premises on which he has reason to believe that coal has been or is being or is likely to be kept stored distributed disposed of or from which coal has been, or is being or is likely to be removed or transported It also confers power to seize coal and records pertaining to the business Clause 15 prescribes the penalties which may be imposed in the event of the failure to comply with the provisions of the Order It stated that the defaulter may be punished under the provisions of the Essential Commodities Act 1955 It is obvious that the U P Coal Control Order 1977 was issued at a time when there was shortage of coal and it was felt necessary to regulate its distribution and supply as well as its price As and when the shortage eased the State Government issued orders from time to time At one time the District Administration regulated the storage of coal and also the price of coal At one stage the price of bricks baked by coal also came to be fixed under the provisions of the Order Through Government Order D/ 17 12 1981 control over the price of bricks baked by coal brought by rail was abolished Price control over slack coal brought by rail was also abolished It appears that the supply position of coal eased and thereupon free sale coal was available Transport of coal was allowed by road so that it may be available to the consumers according to their requirements without any difficulty Since transport charges through road were not uniform it was found difficult to fix price of coal or of the bricks baked by them Therefore the Government did not fix any price either for coal or for bricks baked by coal This is noticed in the Government Order No 3057/19 Anu 9 2 Etta/82 D/ 3 6 82 It appears that although coal was available for free sale and there was no price fixation either in respect of coal or in respect of bricks baked by them the District Magistrate continued to make searches and seizing coal and launching prosecutions This caused dissatisfaction amongst the brick kiln owners The State Government therefore issued the order D/ 3 6 1982 referred to herein above Through this order it was specifically provided that except the licencing Cls 4 to 7 of the Coal Control Order 1977 all the provisions of the said Order shall be kept in abeyance The consequence of keeping these clauses in abeyance was also indicated in this Order It was provided that no action except that contemplated by Cls 4 to 7 shall be taken under the provisions of the Order or of the Essential Commodities Act 1955 From this Order it appears that the Government did not appreciate the raids and searches which were organised by the District Administration for checking quantity of coal stored by Coal Depot Holders or brick kiln owners A clarification of the Government Order D/ 3-6-82 was made by G O No 4453/19 Anubhag 9 2 Etc

Bhatta/82 D/ 9 11 1982 It appears that clarification had been sought from the Government as to whether a person was liable for penal clauses of the Coal Control Order 1977 in case he did coal business without licence or operated a brick kiln without it The Government issued the clarification to the effect that all the clauses of the Coal Control Order will be applicable in cases where licences were not obtained Another Government Order was issued on 7 12 1982 being numbered 6057/19 Anubhag 9-69 Coila/81 In Government Order No 533/19 Anubhag 9 2 Etta Bhatta/82 D/ 4-1 1983 it was mentioned that cls 4 to 7 of the Coal Control Order were suspended with a view to promote production of bricks in sufficient quantity

5 From a perusal of these Government Orders it is apparent that the provisions relating to obtaining a licence have been retained only on considerations of revenue and not in order to regulate the supply and distribution of the coal or the bricks nor with a view to controlling their prices

6 Thus in view of the intention of the Government it is evident that no prosecution can be initiated against the petitioner for any violation of the Coal Control Order There can be no question of blackmarketing if there is no price control on the commodity If the commodity is available in sufficient quantity for free sale there is no question of maintaining supplies of commodities through the agency of Government Therefore since there could be no restrictions on the quantity of the slack coal that may be stored at a particular point of time and hence no offence would be made out

7 The petition therefore succeeds and the first information report registered under Sec 3/7 of the Essential Commodities Act is quashed Any seizure made in pursuance of this report shall be released

Petition allowed

1986 ALL L J 645

H N SETH Actg C J AND N N MITTAL J

Matoley Petitioner v State of Uttar Pradesh and another Respondents

Civil Misc Writ Petns Nos 4037 to 4042 of 1976 D/ 21 11 1985

U P Bhudan Yagna Act (10 of 1953), Ss. 14, 15 A (as amended in 1975) — Grant of lands under unamended provisions — Petitioner fulfilling conditions required then — Amended provisions introducing new conditions for grant — Cancelling grant under new conditions is illegal

The petitioner who was a landless person was granted lands under S 14 of the Act in 1956 He fulfilled the requisite conditions of the provisions as they stood then Provisions of the Act were amended in 1975 For purposes of S 14 of the Act prior to amendment it was not at all material whether a landless person claiming settlement of plot also was an agricultural labourer The section also did not imply any such qualification that the landless person to whom the land could be granted must be resident of the district in which the land was located In 1976 notice was issued to the petitioner requiring him to show cause why the settlement should not be cancelled on the ground that he was not a landless agricultural labourer and that he was not the resident of the District

Held, that there was absolutely no material on the record which could lead to an inference that the petitioner had either been guilty of fraud or of suppressing true facts The grounds mentioned in the show cause notice were also not relevant to the question whether the settlement made in favour of the petitioner was or was not regular The notice requiring the petitioner to show cause why the Patta executed in his favour be not cancelled for the reasons stated therein as also the entire proceedings following thereon stand vitiated The order cancelling the Patta, was thus liable to be quashed. (Para 5)

R Dwivedi for Petitioner Standing Counsel for Respondents.

H N SETH, Actg CJ — The controversy

raised in all these six writ petitions arises in similar circumstances and is identical in nature In this view of the matter parties are agreed that any decision taken in Writ Petition No 4037 of 1976 would also govern Writ Petitions Nos 4038 of 1976 to 4042 of 1976 We are accordingly stating the facts of Writ Petition No 4037 of 1976 and will decide the controversy involved in all these cases in the light of decisions arrived at in this case

2 Petitioner Matole was granted plot No 814 area 9 50 acres situate in village Mahai Baoni Pargana Kalpi District Jalaun in pursuance of the provisions contained in U P Bhudan Yagna Act 1952 on 5-12 1956 He claims that after obtaining the grant he came and settled on the said plot and in that connection he also received assistance from the State Government On 19 5 1976 he received a notice purporting to be under S 15A of the U P Bhudan Yagna Act 1952 from the Additional Collector (Ceiling) District Jalaun requiring him to show cause why the settlement of plot No 814 made in his favour in the year 1956 be not cancelled for following two reasons —

1 The petitioner was not a landless agricultural labourer and

2 The petitioner was not a resident of district Jalaun

In response to the said notice the petitioner filed objections before the Additional Collector and contended that the show cause notice issued to him was invalid He also questioned the right of the Additional Collector to cancel the settlement and contended that he was a resident of Shaheednagar and was at the time when the plot was settled with him landless agricultural labourer The Additional Collector vide his order D/ 13 9 1976 rejected the objection filed by the petitioner and directed that the Patta executed in his favour on 5 12 1956 be cancelled He also directed the Tahsildar to make necessary corrections in the revenue records Aggrieved the petitioner has approached this Court for relief under Art 226 of the Constitution

3 State of Uttar Pradesh enacted the Uttar Pradesh Bhudan Yagna Act 1952 (U P Act X of 1953) which was brought into force with effect from 5-3-1953 The Act provided for donation of land to the Bhudan Yagna and for the constitution of a Committee entrusted with the right to administer and manage all such land Sec 14 of the Act enabled the Committee or such authority or the person as the Committee with the approval of the State Government may specify either generally or in respect of any area to in the manner prescribed grant land which under the provisions of the Act vested in it The Act was Amended by U P Act X of 1975 with effect from 21 1 1975 The amending Act amended the provisions of S 14 of the principal Act The provision contained in S 14 with regard to grant of land being made to landless persons was altered and a provision was made that the grant under the section could be made only in favour of a landless agricultural labourer The amending Act further inserted a new S 15 A in the principal Act enabling the Collector to on his own motion or on the report of the Committee or on the application of any person aggrieved by the grant of any land made under S 14 whether before or after commencement of Uttar Pradesh Bhudan Yagna (Amendment) Act 1975 inquire into such grant and to if he felt satisfied that the grant was irregular or was obtained by the grantee by misrepresentation or fraud cancel the same It was acting under this new S 15A that the notice was issued by the Additional Collector (Ceiling) on 19 5 1976 requiring the petitioner to show cause why the settlement of plot made with him be not cancelled for the two reasons indicated above

4 A perusal of S 15 A clearly indicates that the Collector has been empowered to cancel settlement under the Bhudan Yagna Act made with any person both before and after the amending Act came into force in the year 1975 on following two conditions —

1 The grant was irregular

2 The grant had been obtained by practising fraud or misrepresentation

In the instant case it is not the case of the respondents that the grant was being sought to be cancelled either on the ground of fraud or of misrepresentation Their case is that grant made in petitioner's favour is being cancelled because in the opinion of the respondents it was irregular According to the respondents under the Act, no grant could be made in favour of the petitioner as he was neither a landless agricultural labourer nor was he a resident of district Jalaun

5 In order to find whether a particular grant made in favour of a person under the provisions of Bhudan Yagna Act is regular or not the provisions of the Act as they stood at the time of making of the grant have to be looked into In the instant case the grant was made in the year 1956 prior to the amendment of S 14 of the Act in the year 1975 Sec 14 of the Act as it stood in the year 1956 enabled the Committee to settle the land obtained under the Act with landless persons It neither specified that such landless persons had also to be agricultural labourers nor that they had to be residents of the district in which the concerned land was located Case of the petitioner in this regard is that in the year 1956 he had no land in his name and was as such a landless person and the settlement made on him was quite legal The stand taken by the respondents in para 8 of the counter affidavit is that the petitioner had obtained the grant by making misrepresentation and practising fraud that is by claiming to be landless person when he in fact was not such a person residing in the same locality Further in his objections the petitioner neither stated that he was a landless person nor did he produce any evidence in support of the claim made by him This stand taken by the respondents in their counter affidavit cannot be accepted A perusal of the notice copy whereof has been filed as Annexure-1 to the writ petition shows that the show cause notice was issued to the petitioner not for the reason that he was a landless person but because he was said not to be a landless agricultural labourer There can be landless person without his being a landless agricultural labourer Moreover the order passed by the Additional Collector (Ceiling) dated 13-9 1976 whereby he rejected petitioner's objection indicates that the petitioner did not contend before him that he was a landless person but then the Additional Collector proceeded to reject petitioner's objection merely on the ground that he did not submit any proof in support of his claim. The order does not indicate that there was any material before the Additional Collector (Ceiling) to indicate that the petitioner was, at the time when the plot was settled with him in fact not a landless person For purposes of Sec 14 of the Act as it stood at the relevant time that is in the year 1956 it was not at all material whether a landless person claiming settlement of plot was also an agricultural labourer At that time the section also did not imply any such qualification that the landless person to whom the land could be granted must be resident of the district in which the land was located In this view of the matter it is evident that there was absolutely no material on the record which could lead any one to infer that the petitioner had either been guilty of fraud or of suppressing true facts The two grounds mentioned in the show cause notice are also not relevant to the question whether the settlement made in favour of the petitioner in the year 1956 was or was not regular The notice requiring the petitioner to show cause why the patta executed in his favour in the year 1956 be not cancelled for the reasons stated therein as also the entire proceedings following thereon stand vitiated The order D/ 13-9-1976 cancelling the patta, executed in favour of the petitioner in the year 1956 on the two grounds stated in the show cause notice is thus liable to be quashed.

6 In the result, the petition succeeds and is allowed with costs The order D/ 13-9 1976 is quashed Stay order D/ 20-9 1976 is vacated

Petition allowed

1986 ALL L J 647

B L YADAV J

Amar Singh and another Petitioners v Assistant Director of Consolidation Ghaziabad and others, Respondents

Civil Misc Writ Petn No 9502 of 1980 D/ 28 1 1986

U P Consolidation of Holdings Act (5 of 1954), S 12 — Proceedings under — Bhumidhar executing will in favour of widow — Only rights of limited owner conferred — Widow cannot transfer her rights by will. It is true that even though a widow inherits right of Bhumidhar or she acquires Bhumidhari rights, she can make the transfer But in case her rights of transfer have been controlled by a will executed earlier in her favour she would be having no better rights than conferred on her by the will. There is another aspect of the

matter which is that by a will even the law of inheritance or succession can be controlled or modified or altered Even the stranger can be made heir of the last male tenant or the testator and the other heirs who would have been entitled either under the personal law or under the Tenancy Law i e as provided under S 171 of the U P Z A and L R Act and S 35 of the U P Tenancy Act can be omitted by executing a will (Paras 11 12)

Held, on facts that the testator had executed a valid will in favour of his wife and the latter acquired only the rights of limited owner as provided in the will and hence she has no right to execute the will on 10-4-76 in favour of the petitioners and after her death her daughters became her heirs (Para 13)

Cases Referred	Chronological	Paras
1973 All LJ 599	1973 Rev Dec 444	12
AIR 1968 SC 1058		11
AIR 1965 All 1 (FB)		11

Vishnu Sahai for Petitioners Standing Counsel for Respondents

ORDER — This petition under Art 226 of the Constitution is directed against the order D/ 16 10 80 passed by the Asstt Director of Consolidation allowing the revision filed by respondents 6 and 7 in proceedings under S 12 of the U P Consolidation of Holdings Act (for short the Act)

2 The facts leading to the present petition are that Chak No 202 was recorded in the name of Smt Gilha widow of Chhukkhan An objection under S 12 of the Act was filed by Smt Sagia and Smt Reoti, respondents 6 and 7 alleging that they are daughters of Smt Gilha and Chhukkhan and the latter has executed a will dated 4th Aug 1971 in favour of Smt Gilha the own mother of the objectors and she was given only a life estate hence she had no right to execute the will D/ 10-4-76 in favour of the petitioners It was further alleged that the latter will was illegal and that need not be given effect to in the revenue papers rather their names may be entered as bhumidhar being the heirs of their mother

3 The petitioners filed an objection denying the case of respondents 6 and 7 alleging that Smt Gilha had executed a will on 10-4-76 in their favour hence their names may be entered as bhumidhar and the objection of respondents 6 and 7 deserved to be dismissed

4 The Consolidation Officer held that Smt Gilha had no right to execute the will D/ 10-4-76 hence the petitioners were not entitled to be entered in place of deceased rather only respon 7 were entitled to be entered in revenue papers after the death of their mother The appeal filed by the petitioners was allowed Thereafter the revision filed by respondents 6 and 7 was allowed and their names were ordered to be entered in place of Smt Gilha their mother Against this order the present petition has been filed

5 Sri B Dayal appearing for the petitioners urged that the second will executed by Smt Gilha on 10 4 76 in favour of the petitioner was legal and valid and Chhukkhan had no rights to execute the will on 4-8 71 conferring only limited rights on Smt Gilha that she had acquired full fledged rights under the will and was competent to execute the subsequent will D/ 10-4-76 in favour of the petitioners and as Smt Gilha did not die intestate hence respondents 6 and 7 could not get any right

6 Sri N C Rajvanshi appearing for respondents Nos 6 and 7 on the other hand urged that Chhukkhan had executed the will in favour of Smt Gilha widow conferring only limited rights of a Hindu widow and she was not given any right to execute any will hence the will in favour of the petitioners was illegal

7 In this case the principal question for consideration is as to whether the will dt 4-8 71 executed by Chhukkhan in favour of his wife Smt Gilha was valid? Chhukkhan being bhumidhar has transferable rights and he executed the will in favour of his widow conferring rights of a limited owner to the effect that she might not execute any further will during her life and after her death the plots may be inherited by his daughters Smt Reoti and Smt Segia (respondents 7 and 6) In these circumstances the intention of the testator is paramount The well known principle of construction of a will is that the Court must assume itself in the armchair of the testator Applying this principle Chhukkhan would have considered that in case his widow Smt Gilha was given absolute rights she might execute some will or the sale deed and thus deprive his daughters from inheritance The condition accordingly imposed in the will executed by him appears

to be just A copy of the will is available on the record which is Annexure CA2 to the Supplementary Counter affidavit To be exact the words in the will are as follows —

यह कि मेरे परचात यदि मेरी स्त्री श्रीमती सिलिया देवी मौजूद होगी तो सर्वप्रथम मेरी सम्पत्ति उपरोक्त श्रीमती सिलिया देवी की मिलेगी किन्तु वह सम्पत्ति की हीनहयाती मालिक रहेगी और उसकी सम्पत्ति की किसी के हाथ हस्तान्तरण करने का या ऋण बन्धक करने का अधिकार प्राप्त न होगा और मेरी पत्नी के देहान्त के बाद अथवा मेरी पत्नी के मुझसे पहले ही स्वर्गलोग वासी हो जाने की सूरत मे मेरी सम्पत्ति भूमिधारी भूमि व मकानात इत्यादि स्थित ग्राम भदस्याना जिसका पूर्ण विवरण इस लेख के अन्त मे दिया गया कि मालिक व भूमिधर मेरी दोनो पुत्री श्रीमती शिलिया पत्नी श्री रघुबर सिंह व श्रीमती रेवत धर्मपत्नी श्री चेतराम सिंह निवासी ग्राम बुकलाना जिला कलुलन्दशहर वर्तमान निवासी भदस्याना तहसील हापुड़ जिला मेरठ होगी और उनकी सम्पत्ति के विषय मे मेरे समक्ष पूर्ण अधिकार विक्रय आदि के प्राप्त होगे अन्य किसी का मेरी सम्पत्ति से कोई सरोकार किसी रूप मे न होगा।

8 From the aforesaid recital of the relevant portion of the will it is clear that Smt Gita was given only the life interest There is a Roman maxim Non Quod Voluit Testator Sed Quod Dixit In Testatamento Inspicitur which obviously means that not what the said testator wished but what he actually said in the will has to be considered and taken into account in considering the will

9 Further the word Heen Hayat is a well known term in the law which obviously means a limited owner having no transferable rights There is another latin Maxim relevant to the occasion Non Alter A Significatione Verborum Recedi Oportet Quam cum Manifestum Est eiuid Sensisse Testatorem which means there can be no departure from the ordinary meaning of the words used in a will except in so far as it appears that the testator meant something different In the instant case by the use of word Heen Hayat it was clear that the testator intended to confer only limited right on his widow Thereafter he again clarified it by saying that in case his widow dies his daughters would inherit and there would be no right of transfer to his widow The words used in the will are not capable of two interpretations Hence it is clear that the will dt 4-8 71 executed by Chhukkhan in favour of Smt Gita was valid and legal

10 No doubt by the Land Laws Amendment Act No 32 of 1975 sub-sec (2) of S 169 of the U P Z A and L R Act was omitted This sub-sec (2) of S 169 provided that No Bhumidhar entitled to have holding in the right of a widow can bequeath by will such holding or part Now after the deletion of sub sec (2) of S 169 of the U P Z A and L R Act even a widow can execute the will

11 In Ranjit Dixit v Bhrigunath AIR 1965 All 1 (FB) it was held that when a female inherited the holding before the enforcement of the U P Z A and L R Act from the last male holder and has become Bhumidhar under S 18F of the Act or has acquired Bhumidhari rights under Ss 134 and 137 she can transfer such holding and such transfer shall be valid and effective even after her life Their Lordships of the Supreme Court were also pleased to approve the view taken by this Court (vide AIR 1968 SC 1058) There is no denying the fact that even though a widow inherits right of Bhumidhar or she acquires Bhumidhari rights she can make the transfer But in case her rights of transfer have been controlled by a will executed earlier in her favour in that event she would be having no better rights than conferred on her by the will

12 There is another aspect of the matter which is that by a will even the law of inheritance or succession can be controlled or modified or altered Even the stranger can be made heir of the last male tenant or the testator and the other heirs who would have been entitled either under the personal law or under the Tenancy Law i e as provided under S 171 of the U P Z A and L R Act and S 15 of the U P Tenancy Act can be omitted by executing a will ((see Roop Narain v Ramchandra, 1973 Rev Dec 444 (1973 ALJ 599)

13 I am, therefore of the view that the testator Chhukkhan had executed a valid will in favour of his wife Smt Gita and the latter acquired only the rights of limited owner and hence she has no right to execute the will on 10-4 76 in favour of the petitioners and after her death her daughters respondents 6 and 7 became her heirs

14 In view of the discussions made above the writ petition lacks merit and is hereby dismissed with costs

Petition dismissed

1986 ALL L J 650

A N DIKSHIT J

Ramesh Chandra Agarwal, Petitioner v 2nd Additional District Judge Ghazipur and others, Respondents

Civil Misc Writ Petn No 9708 of 1980 D/ 31 7 1985

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act, (13 of 1972), Ss 39, 40 — Application by tenant claiming benefit under — Application filed 8 years after coming into force of the said Act — Delay in filing application was sought to be condoned as per postulates of S 5 of Limitation Act — It would be contrary to the intention of legislature to extend such time by seeking recourse to provisions of S 5 of Limitation Act (Limitation Act (36 of 1963), S 5)

(Para 4)

R K Jain for Petitioner S N A Srivastava (Standing Counsel) for Respondents

ORDER — The instant writ petition under Art. 226 of the Constitution has been filed by the petitioner for quashing the order dt. 15-10-1980 passed by II Addl. District Judge Ghazipur and the order dt 30 10-1978 passed by Munsif Mohammadabad Ghazipur (Annexures Nos 2 and 1 respectively to the Writ Petition)

2 Briefly stated that facts are as under The petitioner was a tenant of the portion in dispute which is owned by respondent 3 A suit was filed for the eviction of the petitioner by the father of respondent 3 prior to the commencement of Act XIII of 1972 on the allegation that U P Act No III of 1947 was not applicable to the building A notice of demand and rent terminating the tenancy was served upon the petitioner and on the failure of the petitioner to comply with the requirement of the notice a suit was filed for eviction and recovery of arrears of rent The suit was contested by the petitioner The trial Court decreed the suit Aggrieved by the judgment and order passed by respondent 2 decreeing the suit a revision was preferred to the Court of District Judge which was transferred to the Court of II Addl District Judge Ghazipur for disposal according to law The revision was also dismissed Feeling aggrieved by the said judgment and order dismissing the revision instant petition under Art 226 of the Constitution has been filed against the said judgments and orders passed by respondents 2 and 1 respectively

3 Counsel for the parties have been heard at length Counsel for the petitioner submitted that respondent 2 in decreeing the suit ignored that the notice under S 106 of T P Act was not served on the petitioner Further the notice was not proved in the Court There is no merit in the contention In the instant suit written statement was filed by the petitioner and in para 8 it has been clearly admitted that the notice was served on the petitioner It has further been urged that a legal error has been committed in the instant case as there was no evidence of formal proof of notice and hence such a finding can be interfered with though it has not been disputed that any misappreciation of evidence would only be deemed to be a finding of fact requiring no interference As has been shown above the notice was served on the petitioner Moreover the notice was adequately proved and the respondent 3 had proved the signatures of his father and uncle who were the authors of the notice and as such it cannot be said that there was no evidence on record The counsel for the petitioner then urged that in the instant case the contract of tenancy was not proved between the parties Annexure 6 to the writ petition is the rentnote which clearly shows that there was a concluded contract of tenancy and as such the submission being not merited deserves to be rejected Lastly the counsel for the petitioner submitted that the trial Court as well as the revisional Court erred in not granting the protection provided to the petitioner as contemplated under Ss 39 and 40 of the Act No XIII of 1972 In the instant case it is admitted that on the date of the commencement Act XIII of 1972 the suit was pending It would be expedient to extract the provisions of Ss 39 and 40 for a fair appraisal of this aspect which are reproduced below —

39 Pending suits for eviction relating to buildings brought under regulation for the first time — In any suit for eviction of a tenant from any building to which the old Act

did not apply pending on the date of commencement of this Act where the tenant within one month from such date of commencement or from the date of his knowledge of the pendency of the suit whichever be later deposits in the court before which the suit is pending the entire amount of rent and damages for use and occupation (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord s full cost of the suit no decree for eviction shall be passed except on any of the grounds mentioned in the proviso to sub-sec (1) or in Cls (b) to (g) of sub-sec (2) of S 20 and the parties shall be entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary

Provided that a tenant the rent payable by whom does not exceed twenty five rupees month need not deposit any interest as aforesaid

40 Pending appeals in suits for eviction relating to buildings brought under regulation for the first time Where an appeal or revision arising out of a suit for eviction of a tenant from any building to which the old Act did not apply is pending on the date of commencement of this Act, it shall be disposed of in accordance with the provisions of S 39 which shall mutatis mutandis apply

4 Section 39 provides for protection being granted where the suit is pending while S 40 provides for such benefit in a case of revision or appeal pending The statutory requirement of the said provision is that the benefit can be given to a person who files an application within the time therein provided i e 30 days Admittedly no application was filed under S 39 of the said Act in the suit which was pending when the Act came into force The counsel for the petitioner has submitted that an application was filed under S 40 of the Act before the revisional Court The suit was decreed as early as 30-10-1978 and as shown above such a protection was not claimed The contention of the petitioner is that the delay in filing the application was liable to be condoned as S 5 of the Limitation Act would entitle him to claim condonation of delay and the respondent 1 erred in rejecting the application without applying the provision of S 5 of the Limitation Act The contention is wholly misconceived and utterly untenable and as such deserves to be rejected It is the case of the petitioner that such an application for claiming the benefit of S 40 was filed though after a lapse of about 8 years of the enforcement of Act XIII of 1972 and the delay occasioned was sought to be condoned as per the postulates of S 5 of the Indian Limitation Act The period provided for claiming the benefit under the provisions of S 39 as well as S 40 of the said Act is only 30 days during which period the persons sought to be evicted may deposit the entire amount of arrears including damages and costs of the suit etc It would be contrary to the intention of the Legislature to e nd such time by seeking recourse to the provisions of S 5 of Limitation Act However it may further be seen that there is nothing on record to show that any amount was deposited In view of the above discussions it cannot be said that respondents 2 and 1 have committed any illegality so as to entitle the petitioner to claim interference under Art. 226 of the Constitution The petition has no force and deserves to be dismissed

5 In the result the petition fails and is hereby dismissed with costs

Petition dismissed

1986 ALL L J 651

=AIR 1986 Supreme Court 307

(From Gujarat)*

AMARENDRA NATH SEN AND RANGANATH MISRA, JJ

Criminal Appeal No 117 of 1977 D/ 18 9 1985

Salimkhan Sardarkhan Appellant v State of Gujarat Respondent.

Criminal P C (2 of 1974), S 386 — Prevention of Corruption Act (2 of 1947), Ss. 5(1)(d) and 5(2) — Trial of police constable for accepting bribe — Trial Court accepting defence version that currency notes were inserted in his pocket without his knowledge — High Court rejecting defence version and convicting accused — Held, on facts reversal

*Criminal Appeal No 11 of 1975 D/ 8-7 1976 (Guj)

was illegal Criminal Appeal No 11 of 1975, D/ 8-7 1976 (Guj), Reversed

The accused appellant was a police constable He was tried for accepting a bribe of Rs 50/ from a taxi driver for allowing him to park his taxi near S T bus stand which was otherwise prohibited. The trial Court accepted the defence that the currency notes had been inserted into the pocket of the accused and acquitted him The High Court taking into consideration the 30 years service of the accused as a police constable did not believe the defence story and reversed the acquittal

Held that the High Court obviously lost sight of the fact that the appellant may have lost his agility and in the peculiar circumstances the notes could have been inserted without the appellant knowing it There was also evidence that the accused s fingers when dipped in mixture did not turn rosy This evidence which had been accepted by the trial court probabilises the defence plea that the currency notes had not been received by the appellant in his left hand and therefore the insertion of the notes into the pocket of the appellant by some other person was more probable This is the defence plea which had been accepted by the trial Court. Consequently reversal by the High Court was not warranted Criminal Appeal No 11 of 1975 D/ 8 7 1976 (Guj) Reversed (Paras 5 6)

Mrs Sheil Setth Advocate for Appellant Mr S K Dholakia Sr Advocate Mr R N Poddar Advocate with him for Respondent

JUDGMENT — This appeal by special leave is directed against the judgment of the Gujarat High Court reversing the acquittal of the appellant The appellant was tried for offences punishable under S 161 of the Indian Penal Code and S 5(1)(d) read with S 5(2) of Act No 2 of 1947 on the allegation of having received Rs 50/ as bribe

2 The appellant was a police constable and at the relevant time on 29 11 73 he was posted at S T Bus Stand at Bhaber P W 1 the informant was plying a taxi and was in the habit of parking the taxi by the side of the bus stand where such parking was prohibited It is the prosecution case that P W 1 used to pay Rs 5/ per month to the appellant as a consideration for not prosecuting him for such illegal parking It is the further case of the prosecution that a few days before 29 11 73 the appellant told the informant that he should pay him (appellant) a sum of Rs 60/ representing the payment for a whole year at Rs 5/ per month, as he was in need of money and it was finally settled that if the amount was paid in lump the informant would get a rebate of Rs 10/ and he would have to pay Rs 50/ only On the information given by P W 1 to the Anti Corruption staff a trap was laid Five 10 rupee currency notes were treated with phenolphthalein powder and made over to P W 1 to be paid as bribe P W 9 the Inspector supervised the trap P Ws 3 and 8 were called as Panches At about 8 in the morning on 29 11 73 P W 1 met the appellant near Jalaram Hotel P W 9 and his companions remained at a distance of about 150 feet P Ws 1 and 3 went into the hotel along with the appellant According to P W 1 he took out the five 10 rupee currency notes and paid them to the appellant who received the notes in his left hand and put them into the side pocket of his Khaki shirt Thereupon as previously arranged P W 1 placed orders in loud voice for pedas At this stage P W 9 and others came up to the appellant and recovered the money It is said that the currency notes were dipped into the mixture of Sodium Carbonate and the same turned rosy in colour Similarly the pocket of the shirt and the fingers of the appellant were put to test and these too turned rosy

3 The defence was a total denial of the bribe having been demanded and taken The appellant stated under S 313 Cr P C that at about 9 30 A M when I was writing my diary in the hotel Ramp (P W 1) came in the hotel and sat by my side Ramp then asked whether I know the death of one woman I told him that I do not know anything about it though I had gone to the hospital to bring the medicine Then he took tea and got up Then Mankadia Saheb Patel Saheb and Morarji came there when I was standing up to go to the bus stand then on Rampbhai making some sign Mankadia Saheb asked me to take out those notes but I refused to do so and therefore Mr Patel took out those notes and counted

4 On behalf of the appellant it had been contended before the trial Court that P Ws 3 and 8 the Panch witnesses were interested in P W 1 and P W 1 was previously working in

the police and had been removed from service It is on account of this interestedness that these Panches were not reliable The learned trial Judge did not believe the prosecution evidence regarding acceptance of Rs 500 by the appellant and accepted the defence stand that the currency notes had been inserted by P W 1 into the pocket of the appellant The entire evidence had been taken into account by the learned trial Judge in reaching his conclusion and he acquitted the appellant of both the charges levelled against him.

5 This judgment of acquittal was assailed by the State in appeal before the High Court Dealing with the question as to whether the currency notes could have been inserted into the appellant's pocket the High Court observed On our part we find it extremely difficult to accept this version The respondent was a policeman who was about to retire in a short time He had been in service for more than 30 years Even if one is extremely credulous it is not possible to believe that a policeman would not come to know if some one sitting at a distance of 6 inserts currency notes in his left hand side pocket. To us it appears that such a feat cannot be achieved Even if it was attempted, the respondent would have come to know about it The trial Court had accepted the defence plea of possibility of insertion of the currency notes without the appellant knowing about it The High Court reversed the trial Court in this regard by merely drawing a presumption on the basis of the appellant having been a policeman The appellant was already nearing the age of superannuation as found by the High Court and had been more than 30 years in service The High Court obviously lost sight of the fact that the appellant may have lost his agility and in the peculiar circumstaces indicated above the notes could have been inserted without the appellant knowing it Very clever people who are young and agile are often victimised by pick pockets and only when their valuables have been lost the fact is noticed by them The process here is the reverse one Instead of the pocket being picked, currency notes have been inserted into it The view of the trial Court should not have been discarded merely on the basis of what has been extracted by us above from the judgment of the High Court

6 The allegation that P Ws 3 and 8 were interested in P W 1 has not been carefully examined by the High Court yet the conclusion of the trial Court has been disturbed P W 7 was admittedly present at the spot and he has categorically spoken that when the appellant's fingers were put into the mixture they did not turn rosy The trial Court had referred to this fact and relied upon it That evidence which had been accepted probabilises the defence plea that the currency notes had not been received by the appellant in his left hand and therefore the insertion of the notes into the pocket of the appellant by some other person was more probable This is the defence plea which had been accepted by the trial Court We are inclined to think that reversal by the High Court was not warranted.

7 We accordingly allow this appeal set aside the judgment of the High Court and restore the judgment of acquittal passed by the trial Court The bail bonds of the appellant are discharged

8 The appellant was serving as a constable and was due to superannuate on 10-9 1979 There is nothing on record to show as to what happened to him when the judgment of acquittal was set aside We however hope and believe that the reversal of the judgment of the High Court by us will be taken due note of and such relief as the appellant is entitled to in regard to his service benefits would be extended to him without any delay

Appeal allowed

1986 ALL L J 653

=AIR 1986 Supreme Court 494

O CHINNAPPA REDDY AND V KHALID JJ

Writ Petn (Criminal) No 1450 of 1985 D 22 11 1985

Bhim Singh MLA. Petitioner v State of J & K and others Respondents

(A) Constitution of India, Arts. 21 and 22(2) — Personal liberty — Violation of — Police though obtaining remand of arrested person, not producing him before Magistrate within requisite period — There is gross

violation of his rights under Arts 21 and 22(2) (Para 2)

(B) Constitution of India, Arts 21, 22(2) and 32 — Arrest with mischievous and malicious intent — Victim can be compensated by awarding suitable monetary compensation in appropriate cases — Arrest of member of Legislative Assembly while en route to seat of Assembly — Resultant deprivation of right to attend impending Assembly Session — Compensation of Rs 50,000/ awarded

When a person comes to the Supreme Court with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free In appropriate cases the Court has the jurisdiction to compensate the victim by awarding suitable monetary compensation (Para 3)

Where a member of the Legislative Assembly was arrested while en route to seat of Assembly and in consequence the member was deprived of his constitutional rights to attend the Assembly Session and responsibility for arrest lay with higher echelons of the Govt it was a fit case for compensating the victim by awarding compensation Compensation of Rs 50 000/ was awarded. AIR 1983 SC 1086 and AIR 1984 SC 1026 Foll (Para 3)

(C) Constitution of India, Arts 21 and 22(2) — Personal liberty of citizen — Police officers must show greatest respect for it

Police Officers who are custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to bizarre acts of lawlessness (Para 2)

Cases Referred	Chronological	Paras
AIR 1984 SC 1026	1984 Cri LJ 830	3
AIR 1983 SC 1086	(1983) 3 SCR 508	1983 Cri LJ 1644 3

Mr Altaf Ahmad,Mr A Sharan Advocates and Petitioner in-person for Petitioner Mr E. C Aggarwala, Advocate for Respondents

CHINNAPPA REDDY, J — Shri Bhim Singh a member of the Legislative Assembly of Jammu & Kashmir incurred the wrath of the powers that be They were bent upon preventing him from attending the Session of the Legislative Assembly of Jammu & Kashmir which was to meet on 11th September 1985 That appears to be the only inference that we can draw from the circumstances of the case to which we shall now refer On August 17 1985 the opening day of the Budget Session of the Legislative Assembly Shri Bhim Singh was suspended from the Assembly He questioned the suspension from the Assembly He questioned the suspension in the High Court of Jammu & Kashmir The order of suspension was stayed by the High Court on 9th September 1985 On the intervening night of 9th 10th September 1985 he was proceeding from Jammu to Srinagar En route at about 3 00 A M (on 10th) he was arrested at a place called Qazi Kund about 70 kms from Srinagar He was taken away by the police As it was not known where he had been taken away and as the efforts to trace him proved futile his wife Smt Jayamala acting on his behalf filed the present application for the issue of a writ to direct the respondents to produce Shri Bhim Singh before the Court to declare his detention illegal and to set him at liberty She impleaded the State of Jammu & Kashmir through the Chief Secretary as the first respondent the Chief Minister the Deputy Chief Minister and the Inspector General of Police Jammu & Kashmir as respondents 2 3 and 4 On Sept 13 1985 we directed notice to be issued to the respondents and we also directed the Inspector General of Police to inform Smt Jayamala where Shri Bhim Singh was kept in custody On Sept. 16 1985 Shri Bhim Singh was released on bail by the learned Additional Sessions Judge of Jammu before whom he was produced Shri Bhim Singh filed a supplementary affidavit on 20th September 1985 stating more facts in addition to what had already been stated by Smt Jayamala in the petition He categorically asserted that he was kept in police lock up from 10th to 14th and that he was produced before a Magistrate for the first time only on the 14th Thereafter on 24th Sept 1985 we issued notice to the Director General of Police State of Jammu & Kashmir Mr Mir Superintendent of Police Anantnag Mohd Shafi Rajguru Inspector of Police Amin Amjum, Deputy Superintendent of Police Udhampur Gupta Deputy Superintendent of Police Jhajar Kolli and the

Officer in charge of Police Station Satwari A counter affidavit has been filed on behalf of the State of Jammu & Kashmir by Abdul Qadir Parrey Affidavits have also been filed by M M Khajuria Inspector General of Police M A Mir Superintendent of Police Anantnag Mohd Shafi Laigroo Inspector of Police District Police Lines Anantnag Mohd Amin Amjum Deputy Superintendent of Police Headquarters, Udhampur and Rajinder Gupta, Probationary Deputy Superintendent of Police Udhampur Shri Bhim Singh has also filed a rejoinder affidavit

2 From the affidavits filed by the several police officers it transpires that an FIR under S 153A of the Ranbir Penal Code was registered against Shri Bhim Singh on Sept 9 1985 at Police Station Pacca Danga, Jammu on the allegation that he had delivered an inflammatory speech at a public meeting held near Parade Ground, Jammu at 7 00 P M on Sept 8 1985 The Officer in charge of Police Station Pacca Danga brought the matter to the notice of the Senior Superintendent of Police Jammu who in turn informed the Deputy Inspector General of Police of Jammu Range On 10th Sept 1985 requisition for the arrest of Shri Bhim Singh was sent to the Superintendent of Police Anantnag through the Police Control Room Srinagar This fact is sworn to by Shri M M Khajuria, Inspector General of Police Jammu & Kashmir Shri M A Mir Superintendent of Police Anantang has however stated in his affidavit that on Sept 9 1985 at about 11 30 P M he was informed by the Police Control Room, Srinagar that Shri Bhim Singh MLA was required to be apprehended as he was wanted in a case registered under S 153A of Ranbir Penal Code According to him he immediately directed the Office-in charge of Police Station Qazi Kund that Shri Bhim Singh may be apprehended as and when he reached his jurisdiction He further instructed him that he should be brought to the District Headquarters, Anantnag after his arrest These statements are obviously untrue in view of the affidavit of Shri Khajuria Inspector General of Police that the information to the Superintendent of Police Anantnag was conveyed through the Police Control Room Srinagar on 10th Sept 1985 Shri Mir has not chosen to explain why he expected Shri Bhim Singh to pass through Qazi Kund that night Quite obviously even before he had received any information from the Police Control Room about the alleged case registered against Shri Bhim Singh, Shri Mir had instructed the Officer in-charge Police Station Qazi Kund to arrest Shri Bhim Singh if he came within his jurisdiction Whether he did it on his own and if so for what reason or whether he did it on other instructions received by him is a matter which requires our consideration At about 3 00 A M according to Shri Mir Shri Bhim Singh was arrested at Qazi Kund by the Officer in charge of Police Station Qazi Kund and brought to the District Headquarters where it appears Shri Bhim Singh was provided with facilities for rest, wash, breakfast etc It is necessary to mention here that no affidavit has been filed before us by the Officer in charge of Police Station Qazi Kund the officer who arrested Shri Bhim Singh It appears that under the orders of the Superintendent of Police Anantnag, Shri Bhim Singh was taken from Anantnag by Shafi Laigroo Inspector of Police District Police Lines Anantnag in a Matador at about 7 30 A M on 10th September 1985 They reached, according to Mohd Shafi Laigroo Batota at 2 00 P M where Bhim Singh was provided with lunch They reached Udhampur at 5 00 P M where Bhim Singh was provided with tea and finally they reached Jammu City Police Station at 7 30 P M There they learnt that Bhim Singh was wanted in connection with a case registered by the police of Pacca Danga Station He was therefore taken to Pacca Danga Police Station and handed over to the Officer in charge of Pacca Danga police Station Mohd Amin Amjum Deputy Superintendent of Police Headquarters Udhampur and Shri Rajender Gupta Probationary Deputy Superintendent of Police Udhampur were directed by the Senior Superintendent of Police Udhampur to see to the safe passage of Bhim Singh through Udhampur District They were informed that Bhim Singh was taken from Anantnag to Jammu in a matador So they followed the matador in which Bhim Singh was being taken from Chenani Police Station to Jammu and thereafter returned to their respective stations. According to the Inspector General of Police Shri Bhim Singh was taken to Police Station, Pacca Danga at about 9 30 P M On 11th Sept 1985 a remand to police custody for two days

was obtained from an Executive Magistrate First Class A copy of the application for remand made in Urdu with the endorsement of the Executive Magistrate First Class has been filed as an annexure to the affidavit of Shri Khajuria The endorsement says Remanded for two days with effect from 11th instant It is signed by the Magistrate and dated 11th Sept 1985 Neither the application nor the endorsement shows that Shri Bhim Singh was produced before the Magistrate when remand was sought. Shri Bhim Singh expressly denied that he was produced before any Magistrate on 11th With reference to the remand obtained on 11th Sept 1985 Shri Khajuria does not state in his affidavit that Shri Bhim Singh was produced before the Executive Magistrate First Class on 11th Sept 1985 But in very careful and guarded language he says A remand to police custody for two days was obtained by Pacca Danga Police Station from Executive Magistrate First Class on 11th Sept 1985 The Officer in charge Police Station Pacca Danga has not filed any affidavit It has to be mentioned here that Shri Bhim Singh moved an application before the Executive Magistrate on 24th Oct 1985 to be informed as to the time when remand was obtained from the Magistrate The Magistrate made the following endorsement on the application of Shri Bhim Singh

Returned in original to the applicant with the remarks that the remand application was moved before me by the SHO Pacca Danga Jammu on 11th September 1985 after office hours in the evening at my residence and the (illegible) remanded the applicant in police custody for a period of two days alone

On the expiry of the remand of two days granted by the Executive Magistrate a further remand was obtained for one day this time not from the Executive Magistrate First Class but from the Sub Judge It was probably thought not wise to go before the same Magistrate and ask for a second remand The application made in urdu to the Sub-Judge with the endorsement of the Sub-Judge has also been filed as an annexure to the Affidavit of Shri Khajuria The endorsement of the Sub-Judge reads

Application for police remand has been moved by Shri Bansi Lal (Illegible) S H O P/S Pacca Danga with the submission that the accused Shri Bhim Singh is sick (Medical Certificate attached) and he be removed to the Police lock up as the investigation in the case is still in progress

Perused the police diaries with the SHO and also the medical (illegible) examination slip The accused is authorised to be left in police lock up for one day The accused be produced in the Court by tomorrow for further necessary remand orders

The endorsement is signed by the Sub-Judge and is dated 13th Sept 1985 We have again to mention here that Shri Bhim Singh requested the Magistrate to give him a copy of the Medical certificate purported to have been submitted by the S H O Pacca Danga On this application the Sub-Judge made the following endorsement

Shri Bhim Singh has moved an application requesting this Court to certify the time when the police remand application was moved before me by Police P/S Pacca Danga on 13 9 85 The application is also accompanied with a photostat copy of the remand order passed by me on 13 9 85 as a duty Magistrate The application in original was forwarded to the I/C Police Station Pacca Danga for report and production of case diaries of the case for perusal but it has been reported that the case diaries are with SHO who is out on law and order duty

From the perusal of the photostat copies of the remand order and from my recollection it is certified that the remand application was moved before me at my residence after court hours in the evening

Shri Bhim Singh swears in his rejoinder affidavit that he was not produced before the Sub Judge on 13th nor was he examined at any time by any doctor Shri Khajuria in his affidavit again uses very careful language and says On the expiry of this remand an application for further remand was submitted before the Sub-Judge (Judicial Magistrate First Class) on 13th Sept 1985 who extended the remand by one day Shri Khajuria does not say a word about Shri Bhim Singh having been examined by any doctor He makes no reference to the production of any medical certificate before the Sub-Judge As already mentioned, the Officer in charge of the Pacca Danga Police Station has not filed any affidavit before us Thereafter on 14th Sept 1985 Shri Bhim

Singh was produced before the Sub-Judge and was remanded to judicial custody for two days with a direction to produce him before the Sessions Judge Jammu on 16th Sept 1985 He was accordingly taken to the Court of the Sessions Judge on 16th Sept 1985 but as the Sessions Judge was absent, he was produced before the Additional Sessions Judge He was released on bail on his personal bond by the Additional Sessions Judge That he was produced before the Magistrate on 14th remanded to judicial custody for two days produced before the Additional Sessions Judge on 16th and released on bail are facts which are not disputed by Shri Bhim Singh In his affidavit when he refers to the events of 14th and 16th September 1985 Shri Khajuria takes good care to use the words produced before the Sub-Judge and produced before the Additional Sessions Judge As mentioned by us earlier with reference to the events on 11th and 13th Sept 1985 Shri Khajuria very carefully refrained from using the word produced He merely said remand was obtained Shri Bhim Singh in his supplemental and rejoinder affidavits has stated certain facts relating to alleged further harassment by the police We are not concerned with those further facts for the purposes of this case We are only concerned with the detention of Shri Bhim Singh from 3 00 A M on 10th Sept 1985 until he was produced before the Sub-Judge on 14th Sept 1985 The two remand orders said to have been made by the Executive Magistrate First Class and Sub-Judge on 11th and 13th Sept 1985 respectively do not contain any statement that Shri Bhim Singh was produced either before the Executive Magistrate First Class or before the Sub-Judge The applications for remand also do not contain any statement that Shri Bhim Singh was being produced before the Magistrate or the Sub-Judge Shri Khajuria, the Inspector General of Police has very carefully chosen his words and stated in the affidavit that remand orders were obtained He refrained from stating that Shri Bhim Singh was produced before the Magistrate or the Sub-Judge on 11th and 13th The Medical Certificate referred to in the application dated 13th Sept 1985 has also not been produced and Shri Khajuria makes no reference to it in his affidavit In addition we have the important circumstance that no affidavit of the officer in charge of the police station Pacca Danga has been filed before us Nor has the affidavit of the officer who arrested Shri Bhim Singh been filed before us At the time of hearing the petition on 19th Nov 1985 Shri E C Aggarwal stated to us that the affidavits of the two police officers had been got ready but were mislaid. He tried to show us some photostat copies of the alleged affidavits and prayed that the case might be adjourned for filing the affidavits of the two police officers We refused to accede to the request There was ample time for the respondents to file the affidavits of the two police officers after we issued notice to the respondents It is not disputed that right from the beginning they were aware of the writ petition filed in this Court The affidavits of Shri Khajuria and others were filed as far back as 16th Oct. 1985 and there was no reason whatsoever for not filing the affidavits of the two police officers at that time When the complaint was of illegal arrest and detention the least one would expect the respondents to do is to file the affidavits of the officer who arrested the petitioner and the officer who produced him before the Magistrate for the purpose of obtaining orders of remand Instead of filing their affidavits several inconsequential affidavits were filed perhaps only to confuse the issue Shri Khajuria, the Inspector General of Police filed a lengthy affidavit containing statements of fact most of which he could not be personally aware However he chose to use careful language as pointed out by us, whenever he referred to the remand of Shri Bhim Singh or his production before a Magistrate or Sub-Judge We are convinced that the failure to file the affidavits of the officers, who arrested Shri Bhim Singh and the Sub-Inspector in charge of Pacca Danga Police Station was deliberate They were to be kept back until there was dire necessity We do not have the slightest hesitation in holding that Shri Bhim Singh was not produced before the Executive Magistrate First Class on 11th and was not produced before the Sub-Judge on 13th. Orders of remand were obtained from the Executive Magistrate and the Sub-Judge on the applications of the police officers without the production of Shri Bhim Singh before them The manner in which the orders were obtained, i e at the residence of the Magistrate and the Sub-Judge after office hours, indicates the surreptitious nature of the conduct of the

police The Executive Magistrate and the Sub-Judge do not at all seem to have been concerned that the person whom they were remanding to custody had not been produced before them They acted in a very casual way and we consider it a great pity that they acted without any sense of responsibility or genuine concern for the liberty of the subject The police officers of course acted deliberately and mala fide and the Magistrate and the Sub Judge aided them either by colluding with them or by their casual attitude We do not have any doubt that Shri Bhim Singh was not produced either before the Magistrate on 11th or before the Sub-Judge on 13th though he was arrested in the early hours of the morning of 10th There certainly was a gross violation of Shri Bhim Singh s constitutional rights under Arts 21 and 22(2) Earlier we referred to the circumstance that though Shri Khajuria Inspector General of Police stated that information was sent to Superintendent of Police Anantnag through the Police Control Room Srinagar on 10th Sept 1985 Shri Mir the Superintendent of Police Anantnag stated that on 9th Sept 1985 at 11 30 P M he was informed by the Police Control Room, Srinagar that Shri Bhim Singh was required to be apprehended as he was wanted in a case registered under S 153A of the Ranbir Penal Code Nobody cared to explain why it was thought that Bhim Singh would pass through Qazi Kund in Anantnag District on the night of September 9 10 Nobody thought fit to explain how and why the Senior Superintendent of Police Udhampur came to direct his officers to escort Bhim Singh It has not been explained how and when the Senior Superintendent of Police Udhampur came to know of the arrest of Bhim Singh and who required him to arrange for the safe passage of Bhim Singh through Udhampur District To our minds it appears as if it was expected that Bhim Singh would proceed from Jammu to Srinagar on the intervening night of 9 10 September 1985 as there was a meeting of the Assembly on 11th September and the police were alerted to arrest him when sighted en route to Srinagar and take him back to prevent him from proceeding to Srinagar to attend the Session of the Legislative Assembly We can only say that the Police Officers acted in a most highhanded way We do not wish to use stronger words to condemn the authoritarian acts of the police If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion one can only wonder what may happen to lesser mortals! Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness Custodians of law and order should not become depredators of civil liberties Their duty is to protect and not to abduct

3 However the two police officers the one who arrested him and the one who obtained the orders of remand are but minions, on the lower rungs of the ladder We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom on the material now before us We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity Since he is now not in detention there is no need to make any order to set him at liberty but suitably and adequately compensated he must be That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in Rudul Sah v State of Bihar (1983) 3 SCR 508 (AIR 1983 SC 1086) and Sebastian M Hongray v Union of India AIR 1984 SC 1026 When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded the mischief or malice and the invasion may not be washed away or wished away by his being set free In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation We consider this an appropriate case We direct the first respondent the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs 50 000/- within two months from today The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh

Order accordingly

1986 ALL L J 659

= AIR 1986 Supreme Court 803

(From Gujarat)*

D P MADON AND G L OZA JJ

Civil Appeal No 1464(N) of 1972 D/ 19 12 1985

State of Gujarat, Appellant v Panch of Nani Hamam s Pole and others Respondents

Land Acquisition Act (1 of 1894), Ss 4(1), 55 — Acquisition of land — Personal notice to each and every interested person need not be served. Civil Second Appeal No 45 of 1963, D/ 8-7 1970 (Guj), Reversed. (1969) 10 Guj LR 503, Overruled

By reading S 4(1) with Rule 1 of Gujarat Rules framed under S 55 it could not be interpreted to mean that a personal notice to each and every interested person is the requirement of S 4 and in absence of such a notice the proceedings of acquisition will be invalidated The manner in which the notice is to be given is provided in S 4(1) itself by publication of the substance of the notification at a convenient place in the locality Civil Second Appeal No 45 of 1963 D/ 8 7 1970 (Guj) Reversed (1969) 10 Guj LR 503 Overruled (Para 11)

Cases Referred Chronological Paras

(1984) 25(2) Guj LR 844 1985 Guj LH 110 9
AIR 1978 SC 515 9 12
(1969) 10 Guj LR 503 ILR (1969) Guj 597 7 9 11

Mr G A Shah Sr Advocate Mr Girish Chandra Mr R N Poddar and Mr C V Subba Rao Advocates for Appellant Mr H J Zaveri Advocate for Respondents (not present)

OZA, J — This appeal is by special leave granted by this Court against the judgment of Gujarat High Court at Ahmedabad in Civil Second Appeal No 45 of 1963

2 Respondents Nos 2 and 3 filed a suit No 1476 of 1958 in the Court of Joint Civil Judge (Senior Division) Ahmedabad for declaration that the proceedings and award in land acquisition case No L.A.Q 1496 were illegal and for injunction restraining the defendants, the Panch of Nani Hamam s Pole of Gujarat and the State of Gujarat from doing any act affecting the plaintiff's possession of Municipal Census Nos 605 and 605/1 and Census Nos 1335 to 1337 of Shahpur Ward II and the superstructure standing thereon situated in Nani Hamam, Ahmedabad

3 These lands were acquired by acquisition proceedings under Land Acquisition Act 1894 After Notifications under Sections 4 and 6 the acquisition proceedings proceeded further for determination of compensation and an award was made

4 The grievance made by Plaintiffs/ Respondents Nos 1 and 2 was that no notice was given to them personally under Section 4 and Section 9(3) of the Land Acquisition Act and that they were not aware of the land acquisition proceedings till their landlord defendant No 1 told them that possession of these lands was to be handed over to the Government on 22nd July 1958 Their contention is that they were the tenants of respondent No 1 in respect of the acquired land and have raised structures thereupon at their own costs Being the tenants in the lands acquired and being the occupants of the structures standing on the lands they were entitled to individual notices under Sections 4(1) and 9(3) of the Act and in absence of such notices, the entire proceedings are vitiated

5 The present appellant the State of Gujarat, in their written statement pleaded that the notification under Section 4 apart from being published in the Gazette was posted on the site and was served on the persons known or believed to be interested Similarly notices under Sections 9 and 10 were also posted on the site to be acquired and were also served on the persons known or believed to be interested in the land

6 The trial Court held that as plaintiffs/respondents Nos. 2 and 3 are persons interested in the acquired land they were entitled to individual notices under Section 9(2) of the Act and no notice was served on them as the acquisition authorities did not know that the plaintiffs/respondents are

*S A No 45 of 1963 D/ 8 7 1970 (Guj)

BD/BD/A801/86/VNP

interested in the land as their names did not appear in the City Survey Records The trial Court further held that the plaintiffs/ respondents had actual knowledge of the intended acquisition and as such failure to give individual notice does not invalidate the acquisition proceedings The trial Court therefore dismissed the suit

7 The plaintiffs/respondents preferred an appeal but the First Appellate Court maintained the judgment of the trial Court and dismissed the appeal The plaintiffs/ respondents preferred a second appeal to the High Court and raised the same contentions The High Court upheld the contentions and set aside the acquisition proceedings The High Court placing reliance on the earlier decision of the High Court in Ashokkumar Gordhanbhai v State of Gujarat (1969) 10 Guj LR 503 held that under Section 4 of the Land Acquisition Act read with Rule 1 of the Rules framed by the State Government under Section 55 of the Act service of notice on parties interested in the land is not only obligatory but a condition precedent and therefore on this count held the acquisition proceedings to be bad and it also granted injunction restraining the State Government from interfering with the possession of the plaintiffs of the property The High Court refused the certificate under Art 133 and therefore this appeal has been preferred after obtaining a certificate from this Court

8 Learned counsel appearing for the State contended that the respondents/plaintiffs challenged the proceedings on two grounds (i) on the ground that Section 4 read with Rule 1 of the Gujarat rules requires a personal notice of intention to acquire under Section 4(1) (ii) the proceedings were also challenged on the ground that under Section 9(3) of the Land Acquisition Act the plaintiffs/ respondents are entitled to individual notice But it was contended by learned counsel that so far as objection under Section 9(3) is concerned it would only invalidate the award but in the present case after the award was made the plaintiffs/respondents accepting the award filed a suit against the landlord who was a party to the acquisition proceedings and obtained a decree for his share of the compensation That having been done the question of objection under Section 9(3) now is no longer of any consequence He therefore contended that the only question which deserves consideration in this appeal is about the notice under Section 4 to the plaintiffs/respondents in view of Rule 1 of the Rules framed under Section 55 of the Land Acquisition Act which are known as Bombay Rules adopted by the State of Gujarat

9 It was contended that following the decision of the Gujarat High Court in Ashokkumar Gordhanbhai v State of Gujarat, (1969 (10) Guj LR 503 Gujarat High Court in the present case held that as notices to the plaintiffs/respondents were not served as required in Rule 1 the proceedings of acquisition are invalidated But it was contended by the learned counsel that this view was not followed by Gujarat High Court in a subsequent decision in Vasudev Chunilal Pancholi v State of Gujarat (1984) 25(2) Guj LR 844 In this decision the High Court following the decision in Bai Malimabu v State of Gujarat AIR 1978 SC 515 held that individual notice under Section 4(1) read with Rule 1 is not necessary It was therefore contended that Rule 1 of the Rules framed under Section 55 could not go beyond the requirements under Section 4(1) and to that extent the rule is bad in law It was therefore contended that the High Court has committed an error in decreeing the suit filed by plaintiffs/respondents

10 Section 4(1) of the Land Acquisition Act as it stood at the relevant time reads as under

4 Publication of preliminary notification and powers of officers thereupon — (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the Official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality

11 This provision contemplates the notification to be published in the Official Gazette indicating the intention of the State Government of acquisition for a public purpose and it further requires that the Collector shall cause a public notice of the substance of such notification to be given at a convenient place

in the same locality The purpose of this second part of section of giving a notice by the Collector by notifying it at a convenient place in the locality appears to be to intimate the persons affected by the acquisition Rule 1 which is relevant for consideration reads as under

(1) Whenever any notification under Section 4 of the Act has been published but the provisions of the Section 17 have not been applied and the Collector has under the provisions of Section 4(1) issued notices to the parties interested and on or before the last day fixed by the Collector in those notices in this behalf any objection is lodged under Section 5A (2) firstly the Collector shall record the objection in his proceedings Secondly the Collector shall consider whether the objection is admissible according to these Rules

The relevant words in this Rule are Collector has under the provisions of Section 4(1) issued notices to the parties interested It is these words on the basis of which, in the impugned judgment the High Court felt that a personal notice to the persons interested is mandatory provision and in absence of such a notice the proceedings of acquisition will be invalidated In fact there are no words in this rule indicating a personal notice What has been indicated is that the Collector has issued notice to the parties interested under provisions of Section 4(1) Section 4(1) quoted above indicates the manner in which a notice will be given to the parties interested And that is by getting a public notice having the substance of the notification given at a convenient place in the said locality Therefore what Rule 1 contemplates is a notice to the interested parties as required under Section 4(1) and Section 4(1) requires the notice to be notified at a convenient place in the said locality for information of the interested parties It is therefore clear that by reading Section 4(1) with Rule 1 it could not be interpreted to mean that a personal notice to each and every interested person is the requirement of Section 4 and in absence of such a notice the proceedings of acquisition will be invalidated The High Court in the impugned judgment placing reliance on Ashokkumar Gordhanbhai v State of Gujarat (1969 (10) Guj LR 503) (supra) came to the conclusion that as such an individual notice was not served in the present case the proceedings of acquisition are bad in law As discussed earlier reading of Section 4(1) with Rule 1 does not provide for an individual notice but only requires a notice as contemplated under Section 4(1) to the interested persons The manner in which the notice is to be given is provided in Section 4(1) itself by publication of the substance of the notification at a convenient place in the locality It is not in dispute that such a procedure was followed and therefore it could not be said that the notice as contemplated under Section 4(1) read with Rule 1 was not given to parties interested and therefore it could not be held that the proceedings of acquisition are bad in law The High Court therefore was in error and the view taken could not be maintained

12 In Bai Maimuba v State of Gujarat (AIR 1978 SC 515) this Court while considering the language of Rule 30-B of the Gujarat Rules which is more or less similar to Rule 1 quoted above took the view as under

Mr Nagarsheth then submitted that no special notice was given to the appellants of the notification under Section 4(1) as required by the Gujarat Rules, the objections filed by the appellants under Section 5 A were not properly inquired into and heard, the State Government did not give any opportunity to them to make their submissions vis a vis the report submitted by the Collector and the aforesaid infirmities vitiated the declaration under Section 6 of the Act The High Court has rightly held that no special notice was necessary to be given to the appellants in regard to the notification under Section 4(1) Our attention was drawn to the alleged Rule 30B of the Gujarat Rules in support of the contention that such notice was necessary to be issued to the parties interested. There is no such requirement in the said Rule It merely pre-supposes that the Collector has issued notices to the parties interested under Section 4(1) The requirement of the section is giving of a general notice and by two methods – (1) by publication of the notification in the Official Gazette and (2) causing public notice of the substance of such notification to be given at convenient places in the locality The appellants do not contend that there was no compliance with the requirements aforesaid Proper inquiry was held under Section 5-A of

the Act and full opportunity was given to the appellants It was not the requirement of the law to give any further opportunity after a report was made to the State Government It is the function of the State Government to consider the report of the Collector and proceed further in the matter as they think fit and proper to do

13 In the light of the discussions above therefore the appeal is allowed with costs and the judgment and decree passed by the High Court in Civil Second Appeal No 45 of 1963 are set aside and the said second Appeal is dismissed There will be no order as to costs throughout Security amount deposited shall be refunded to the appellant

Appeal allowed

1986 ALL L J 662

= 1986 Lab I C 796

(SUPREME COURT)

(From 1985 All C J 541)

A P SEN E S VENKATARAMIAH AND B C RAY JJ

Civil Appeal No 2999 of 1985 D/ 18 3 1986

Om Prakash Shukla, Appellant v Akhilesh Kumar Shukla and others Respondents

(A) Subordinate Civil Courts Ministerial Establishment Rules (1947), Rr 5, 11 and Appendix II — Rules for the Recruitment of Ministerial Staff to the Subordinate Offices (1950), Rr 3, 5, 6, 7 — Recruitment of ministerial staff — Provision for, made in 1947 Rules — Promulgation of 1950 Rules in supersession of existing Rules — 1950 Rules only making some modification in syllabus for examination — Entire 1947 Rules cannot be said to be repealed by implication by 1950 Rules. (General Clauses Act (10 of 1897), S 6)

The Subordinate Civil Courts Ministerial Establishment Rules 1947 (1947 Rules) made appropriate provisions regarding the recruitment of candidates to the posts in the ministerial establishment in the Subordinate Courts in the former United Provinces and they continued to be in force till July 11 1950 On July 11 1950 the Rules for the Recruitment of Ministerial Staff to the Subordinate Offices (1950 Rules) were promulgated They were applicable not merely to the ministerial establishments in Civil Courts but to the ministerial establishments in several other offices They were promulgated in supersession of all existing rules and orders on the subject They prescribed that recruitment to the ministerial staff in a subordinate office to which the said rules were applicable should be made on the basis of a competitive test and also provided for the mode of calculation of vacancies the period during which competitive examinations should be held the subjects for the test and the marks assigned to each of them and the method of selection of successful candidates They also provided that appointments to higher posts in the ministerial staff of those offices should be made by promotion Rules 9 to 12 of the 1947 Rules and Appendix II to it which dealt with above topics thus stood superseded The other parts of the 1947 Rules which dealt with the nationality domicile and residence of the candidates their academic qualifications character and physical fitness the appointing authority probation and confirmation seniority punishment rate of pay transfers and regulations of conditions of service remained intact since the 1950 Rules did not make any provision as regards these topics Hence it could not be said that the 1947 Rules stood superseded in their entirety by the 1950 Rules (Paras 17 18)

(B) Subordinate Civil Courts Ministerial Establishment Rules (1947), Rr 5, 11 and Appendix II — Rules for the Recruitment of Ministerial Staff to the Subordinate Offices (1950), Rr 3, 5, 6, 7 — Subordinate Civil Courts Ministerial Establishment (Amendment) Rules (1969), Rr 2, 3 — Recruitment of ministerial staff — Competitive test for, held in 1981 — Test held in accordance with 1950 Rules is proper — Amendment Rules of 1969 do not effectively substitute 1950 Rules 1985 All CJ 541, Reversed (General Clauses Act (10 of 1897) S 6), (Interpretation of Statutes — Implied repeal)

Before the commencement of the Constitution recruitment to the ministerial establishment in the Subordinate Civil Courts of the United Provinces was regulated by the

Subordinate Civil Courts Ministerial Establishment Rules 1947 (1947 Rules) Rule 11 of the Rules provided that recruitment shall be on basis of competitive test Details regarding manner of holding of exam were provided by Appendix II to the Rules By virtue of the provisions of Art. 313 and Art. 372 of the Constitution the 1947 Rules continued to be in force even after the commencement of the Constitution But on July 15 1950 the Governor of Uttar Pradesh Promulgated Rules (1950 Rules) for the recruitment of ministerial staff to the subordinate offices in the State of Uttar Pradesh including the offices of subordinate civil courts in exercise of the powers conferred on him by the proviso to Art 309 of the Constitution of India in supersession of all existing rules and orders on the subject The clear effect of the 1950 Rules therefore was that the 1947 Rules stood superseded by the 1950 Rules as regards the subjects prescribed for the test and the manner of the examination to be held for the purpose of selecting candidates for the ministerial staff in the Civil Courts of the State of Uttar Pradesh To be precise Rules 9 to 12 and Appendix II of the 1947 Rules were superseded Subsequently the Subordinate Civil Courts Ministerial Establishment (Amendment) Rules. 1969 (Amendment Rules) came to be passed amending the 1947 Rules The Amendment Rules modified R 5 and Appendix II of the 1947 Rules The disputed competitive test for recruitment was held in the year 1981 It was held in accordance with 1950 Rules The question was whether it ought to have been held in accordance with 1947 Rules as amended in 1969 they being framed later in time and on the same subject

Held that the Amendment Rules of 1969 do not effectively substitute the 1950 Rules and hence the rule of implied repeal could not be applied The 1950 Rules remained operative even in the year 1981 The competitive exam held in accordance with 1950 Rules cannot therefore be held to be bad 1985 All CJ 541 Reversed (Paras 20 21)

The 1969 Amendment Rules do not expressly state that the 1950 Rules would no longer be applicable to the ministerial establishments of the Subordinate Civil Courts They also did not repeal the item referring to the Judicial Department — Subordinate Civil Courts which found a place in the schedule to the 1950 Rules The discontinuance of the application of the 1950 Rules to the ministerial establishments of the Subordinate Civil Courts can only be inferred by relying upon the rule of implied repeal provided the said rule is applicable An implied repeal of an earlier law can be inferred only where there is the enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law that is, where the two laws — the earlier law and the later law — cannot stand together This is a logical necessity because the two inconsistent laws cannot both be valid without contravening the principle of contradiction The later laws abrogate earlier contrary laws This principle is however subject to the condition that the later law must be effective If the later law is not capable of taking the place of the earlier law and for some reason cannot be implemented the earlier law would continue to operate To such a case the rule of implied repeal is not attracted because the application of the rule of implied repeal may result in a vacuum which the law making authority may not have intended By the Amendment Rules of 1969 R 5 of the 1947 Rules was amended. Rule 5 dealt with the minimum academic qualification which a candidate for a post in the ministerial establishment in a Subordinate Civil Court should possess The other amendment related to the substitution of the former Appendix II which related to the subjects prescribed for the competitive examination and the marks assigned to each of them as it obtained before the 1950 Rules came into force by a new Appendix Rule 11 of the 1947 Rules which required the District Judge to hold the examination in accordance with the former Appendix II of the 1947 Rules which also stood superseded by the 1950 Rules in view of Rr 9 and 7 of the 1950 Rules which dealt with the same subject was however not replaced nor a corresponding rule authorising the District Judge to hold the competitive examination in accordance with the new Appendix II was introduced by the 1969 Amending Rules into the 1947 Rules simultaneously The result was that while the new Appendix II again reappeared in the 1947 Rules prescribing certain subjects and marks assigned to them, the authority who should hold the competitive examination was not again prescribed in the 1947 Rules Without

the re-introduction of Rule 11 the mere re-introduction of Appendix II in the 1947 Rules by the 1969 Amending Rules would be meaningless and ineffective as the authority who can hold the examination remained unspecified In the absence of an amendment re-enacting Rule 11 in the 1947 Rules it is difficult to hold by the application of the doctrine of implied repeal that the 1950 Rules have ceased to be applicable to the ministerial establishments of the Subordinate Civil Courts (Para 20)

The 1950 Rules have not been repealed by the Subordinate Offices Ministerial Staff (Direct Recruitment) Rules 1975 (1975 Rules) insofar as the Subordinate Civil Courts are concerned It is true that Rule 20 of the 1975 Rules clearly stated that the 1950 Rules had been repealed But the 1975 Rules did not apply to the Subordinate Courts under the control and superintendence of the High Court Hence the 1950 Rules insofar as they applied to the subordinate courts continued to be in force (Para 22)

(C) Constitution of India, Art. 226 — Writ petition — Grant of relief — Petition challenging validity of competitive exam as not held as per law — Petitioner appearing for examination without protest — Petition filed on realisation that he would not succeed — Relief ought not to be granted to petitioner 1985 All CJ 541, Reversed (Para 23)

Mr S N Kacker Sr Advocate Mr R B Mehrotra, Advocate with him for Appellant Mr Arun Deo Sagar and Pramod Dayal Advocates for Respondents

VENKATARAMIAH, J — This appeal by special leave is filed against the judgment and order of the High Court of Allahabad dated April 12 1985 in Writ Petition No 3961 of 1982 by which the High Court of Allahabad quashed the results of the competitive examination held by the District Judge of Kanpur in September 1981 for selecting candidates for appointment to the vacancies in Grade III of the ministerial staff in the Subordinate Courts in the District of Kanpur

2 Before the commencement of the Constitution, recruitment to the ministerial establishment in the Subordinate Civil Courts of the United Provinces was regulated by the Subordinate Civil Courts Ministerial Establishment Rules 1947 (hereinafter referred to as the 1947 Rules) The said Rules were promulgated by the Governor of the United Provinces on August 1 1947 The expression Ministerial Establishment was defined by R 2(c) of the 1947 Rules as the staff of the Subordinate Civil Courts consisting of ministerial servants as defined in Fundamental Rule (17) Financial Handbook Vol II Part II According to the definition given in R 2(e) of the 1947 Rules the expression Subordinate Civil Courts included the Courts of District and Sessions Judge Additional District and Sessions Judge Civil and Sessions Judges, Civil Judges Additional Civil Judges Munsifs Additional Munsifs and Courts of Small Causes subordinate to the High Court of Judicature at Allahabad or the Chief Court of Oudh at Lucknow R 5 of the 1947 Rules prescribed the academic qualifications which a person should possess for being a candidate to a post in the ministerial establishment It reads as follows

5 Academic qualifications — No person who is not already on the staff attached to a subordinate civil court shall be appointed to a post in the ministerial establishment unless

(a) he has passed at least the High School examination conducted by the Board of High School and Intermediate Education United Provinces or any other examination which has been or may be declared by the Governor to be equivalent thereto

(b) he possesses a thorough knowledge both of Urdu and Hindi

(c) he possesses in the case of a candidate for the post of stenographer a diploma or certificate from a University or a recognised shorthand and typewriting institution showing that he possesses a speed of at least 100 words in shorthand and 35 words per minute in typewriting

3 Rule 11 of the 1947 Rules which is relevant for the purposes of this case reads as follows —

11 The recruitment shall be based on the results of a competitive examination and an interview by the District Judge at the headquarters of the judgeship The examination and the interview shall be held in the manner laid down in Appendix II

Provided that the District Judge may

delegate any one or more of the functions other than the function of interviewing the candidates to a senior civil judge or senior munsif in respect of the examination held under this rule

4 Appendix II of the 1947 Rules which contains the details regarding the manner in which the competitive examination was to be held reads thus —

APPENDIX II
(VIDE RULE 11)

The examination shall be in three parts

(1) Compulsory subjects	350 marks	Total
(2) Optional subjects	50 marks	500
(3) Interview	100 marks	

Compulsory subjects shall be —

(a) Translation from English into Urdu	Total
(b) Translation from English into Hindi	200
(c) Translation from Urdu into English	
(d) Translation from Hindi into English	
(e) Precis writing	50
(f) Dictation	100

Optional subjects —

Shorthand and typewriting	50

In the optional subjects no marks shall be awarded to any candidate who does not reach the minimum standard required in the note to R 14

Any clerk who is already on the establishment and is not qualified as a stenographer may sit for the examination in typewriting and shorthand alone and will be eligible for appointment as stenographer if he qualifies

5 By virtue of the provisions of Article 313 and of Article 372 of the Constitution the 1947 Rules continued to be in force even after the commencement of the Constitution But on July 15 1950 the Governor of Uttar Pradesh promulgated rules for the recruitment of ministerial staff to the subordinate offices in the State of Uttar Pradesh including the offices of subordinate Civil Courts in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution of India in supersession of all existing rules and orders on the subject. These rules were called the Rules for the Recruitment of Ministerial Staff to the Subordinate Offices, 1950 (hereinafter referred to as the 1950 Rules) Rule 2 of the 1950 Rules defined the term Subordinate Office as including all offices under the control of the Governor of Uttar Pradesh other than those of the Secretariat, the State Legislature the High Court and the Public Service Commission. Rule 3 of the 1950 Rules provided that the recruitment to the lowest grade of the ministerial staff in a subordinate office shall be made on the basis of a competitive test. Rules 5 6 and 7 of the 1950 Rules read as follows —

5 Tests to be held annually — The competitive tests shall be held at least once a year and at the time specified in the Schedule by each head of a subordinate office for posts not requiring technical knowledge e g stenography

Provided that if the strength of any office does not warrant annual recruitment or recruitment in a particular year a competitive test shall be held whenever it becomes necessary to recruit a ministerial servant to the office

6 Subjects of the tests — (1) The competitive tests shall comprise a written test as well as an oral test

(2) The subjects of the tests and the maximum marks on each subject shall be as follows

Subjects	Marks
Oral	
(i) Personality	25
(ii) General Knowledge and suitability for the particular post	25
Written	
(i) Simple drafting	50
(ii) Essay and Precis writing	50
(iii) Hindi	50
Optional	
(i) Typewriting and shorthand	50
(ii) English	50

Note — A candidate must take one of the two optional subjects and may take both

7 Selection of candidates -- (1) On the results of the test, the head of the subordinate office shall select a number of candidates sufficient to fill the number of vacancies as ascertained in R 3 and offer to them appointments as and when the vacancies occur according to the order of merit disclosed at the test

(2) No one who has not been selected in accordance with sub-rule (1) shall be appointed to any vacancy unless the list of selected candidates is exhausted

(3) Casual vacancies may be filled up by appointing persons who have not taken the test but their further retention shall depend on their taking the next test and being selected in it

6 In the Schedule attached to the 1950 Rules it was provided that for the offices of the Subordinate Civil Courts the competitive examination should be held in August in second week every year The relevant entry in that Schedule reads as follows —

Judicial (A) Department

(1) Offices of Subordinate Civil Courts — August second week

7 The 1950 Rules did not however expressly say that the 1947 Rules had been superseded by these Rules But it is significant to note that the 1950 Rules clearly stated that the Governor had framed them in supersession of all existing rules and orders on the subject for recruitment to the ministerial establishment of subordinate offices under his control The clear effect of the 1950 Rules therefore was that the 1947 Rules stood superseded by the 1950 Rules as regards the subjects prescribed for the test and the manner of the examination to be held for the purpose of selecting candidates for the ministerial staff in the Civil Courts of the State of Uttar Pradesh To be precise Rr 9 to 12 and Appendix II of the 1947 Rules were superseded The two reasons in support of the above view are (i) that in the definition of the expression Subordinate Office only the offices of the Secretariat the State Legislature the High Court and the Public Service Commission stood excluded and (ii) the offices of the Subordinate Civil Courts were included in the Schedule to those Rules On its administrative side the High Court also understood that the 1950 Rules were applicable insofar as recruitment to the ministerial staff in the Civil Courts was concerned This is evident from a letter written by Shri M P Singh Joint Registrar of the High Court of Allahabad to all the District Judges in the State of Uttar Pradesh on February 12 1973 which is as under —

From

M P Singh B A LL B
Joint Registrar
High Court of Judicature at Allahabad

To

All the District Judges
Subordinate to the High Court of
Judicature at Allahabad

CIRCULAR LETTER

No 14/Ve-4 Dated Allahabad
February 12 1973

Subject — Recruitment to the establishment of the Subordinate Civil Courts

Sir

It has been brought to the notice of the court that many District Judges face a lot of difficulties at the instance of Employment Exchange in making recruitments to their establishments Broadly speaking the difficulties pointed out by them are as under —

1 Quite often the District Judges on the list of approved candidates having exhausted, have to recruit candidates directly without subjecting them to a regular test prescribed under the rules for filling up casual vacancies and for meeting the requirements of newly created additional courts at short notice and such candidates continue in the employment of the civil courts for a considerable time but when a test is held for recruitment the Employment Exchange either refuses to sponsor the names of those candidates or withholds their applications for one reason or the other and consequently such candidates are prevented from taking up the test

2 Sometimes the Employment Exchange while forwarding the applications of candidates withhold applications of such candidates who appear to be deserving and suitable to the District Judges without assigning any reason and this compels the District Judges to recruit candidates only from amongst the

candidates whose applications are forwarded by the Employment Exchange

In order to obviate the difficulties the court has examined the whole scheme and the rules and within framework of the existing rules and Government orders on the subject, the following procedure is laid down for our guidance —

While following the procedure laid down in existing rules published under Government Notification No O-111/XI 8 50 dated July 11 1950 (which was adopted in supersession of Rr 9 to 12 of the U P Subordinate Civil Courts Ministerial Establishment Rules 1947) and amplified in G O No O-2248/II 8 III 1950 dated August 30 1950, the District Judge should in addition himself advertise his requirement under intimation to the Employment Exchange and while doing so he should take care to make it clear that all applications are to be addressed to him and routed through the Employment Exchange The District Judge should further require that candidates should send advance copies of their applications direct to the District Judge which would go to ascertain whether all applications have been forwarded to him by the Employment Exchage or not However if on receiving the applications from the Employment Exchange it is found that applications of certain suitable candidates have been withheld by the Employment Exchange the District Judge may in his discretion, permit such candidates to take the test as contemplated in paragraph 7 of the G O dated August 30 1950 referred to earlier

In the case of candidates who are appointed to fill up casual vacancies without appearing in the regular test prescribed under the rules and are already working on the staff of the Civil Court concerned, they should be treated as departmental candidates and should be allowed to take the test without any reference to the Employment Exchange in order to

(*contd. on col 2*)

enable them to qualify for regular appointment

Yours faithfully
Sd/
M. P Singh
Joint Registrar

(Underlining by us)

8 From the above letter it is clear that the High Court understood that Rr 9 to 12 of the 1947 Rules including R 11 which prescribed the manner of examination (and Appendix II to the 1947 Rules which prescribed details regarding the subjects in the examination which had to be held) had been superseded by the 1950 Rules

9 In the meanwhile in exercise of his powers under proviso to Article 309 of the Constitution the Governor had promulgated the Subordinate Civil Courts Ministerial Establishment (Amendment) Rules 1969 on September 20 1969 amending the 1947 Rules (hereinafter referred to as the 1969 Amending Rules) The 1969 Amending Rules read as follows

No 49(11)/69 Nyaya (Ka 2)
September 20 1969

In exercise of the powers under proviso to the Article 309 of the Constitution the Governor is pleased to make the following rules with a view to amend the Subordinate Civil Courts Ministerial Establishment Rules 1947 published with Government notification No 2494/VII-612 40 dated August 1 1947

RULES

1 Short title and Commencement (1) These Rules may be called the Subordinate Civil Courts Ministerial Establishment (Amendment) Rules 1969 (III) they shall come into force with effect from the date of their publication in the Gazette

2 Amendment of R 5 In the Subordinate Civil Courts Ministerial Establishment Rules 1947 (hereinafter referred to as the said rules) for the rules as set out in Column 1 the rule as set et out in column 4 shall be substituted

Column 1	Column 4
5 Academic qualifications — No person who is not already on the staff attached to a subordinate civil court shall be appointed to a post in the ministerial establishment unless —	Academic qualification No person who is not already on the staff attached to a subordinate Civil Court shall be appointed to a post in the ministerial establishment unless —

Column 1	Column 4
(a) he has passed at least the High School Examination conducted by the Board of High School and Intermediate Education United Provinces or any other examination which has been or may be declared by the Governor to be equivalent thereto	(a) he has passed at least the Intermediate Examination conducted by the Board of High School and Intermediate Education U P or any other examination which has been or may be declared by the Governor to be the equivalent thereto
(b) he possesses a thorough knowledge both of Urdu and Hindi	(b) he possesses a thorough knowledge both of Urdu and Hindi
(c) he possesses in the case of a candidate for the post of Stenographer a diploma or certificate from a University of a recognised Shorthand and Typewriting Institution showing that he possesses a speed of at least 100 words per minute in Shorthand and 35 words per minute in typewriting	(c) he possesses in the case of a candidate for the post of Stenographer a diploma or certificate from a University or a recognised Shorthand and Typewriting Institution showing that he possesses a speed of at least 100 words per minute in typewriting (sic)

3 AMENDMENT OF APPENDIX II

5 In the said Rules for the Appendix as set out in column 1 the Appendix as set in column 2 shall be substituted

Column I		Column II	
Existing Appendix II	Marks	Appendix as hereby substituted	Marks
The examination shall be in three parts		The Examination shall be in three parts	
1 Compulsory subjects	350	1 Compulsory subjects	350
2 Optional subjects	50	2 Optional subjects	50
3 Interview	100	3 Interview	100
Total	500	Total	500
Compulsory subjects shall be		Compulsory subjects shall be	
(a) Translation from English to Urdu	50	(a) Translation from English to Hindi	50
(b) Translation from English to Hindi	50	(b) Translation from Hindi to English	50
(c) Translation from Urdu to English	50	(c) Hindi Drafting (Added)	50
(d) Translation from Hindi to English	50	(d) Hindi Precis writing	50
(e) Precis writing	50	(e) English Drafting (Added)	50
(f) Dictation	100	(f) Dictation	100
OPTIONAL SUBJECTS		OPTIONAL SUBJECTS	
Shorthand & Typewriting	50	Shorthand & Typewriting	50
In the optional subject no marks shall be awarded to any candidate who does not reach the minimum standard required in the note to rule 14		In the optional subject no marks shall be awarded to any candidate who does not reach the minimum standard required in the note to rule 14	
Any clerk who is already on the Establishment and is not qualified as a stenographer may sit for the examination in typewriting and shorthand alone and will be eligible for appointment as stenographer if he qualifies		Any clerk who is already on the Establishment and is not qualified as a Stenographer may sit for the examination in typewriting and shorthand alone and will be eligible for appointment as Stenographer if he qualifies	

10 The existence of these Amending Rules of 1969 was not taken note of by the High Court when the letter of the Joint Registrar dated February 12 1973 was addressed to all the District Judges It appears from the said letter that the High Court was following the 1950 Rules even after the promulgation of the 1969 Amending Rules for purposes of holding the competitive examination for recruitment to the ministerial staff in the Civil Courts Then came the Subordinate Offices Ministerial Staff (Direct Recruitment) Rules 1975 (hereinafter referred to as the 1975 Rules) promulgated by the Governor under the proviso to Article 309 of the Constitution The said Rules were promulgated in supersession of all existing rules and orders on the subject R 2 of the 1975 Rules which dealt with their application read as follows

2 Application of these rules (1) These rules shall govern recruitment to all the ministerial posts of the lowest grade other than the posts of stenographer (which are required to be filled by direct recruitment and which are outside the purview of the Public Service Commission) in all subordinate offices under the control of the Government but excluding the Secretariat the offices of State Legislature, Lokayukt Public Service Commission Uttar Pradesh High Court the Subordinate Courts under the control and superintendence of the High Court the Advocate General Uttar Pradesh and of the establishments under the control of the Advocate General

11 From R 2 of the 1975 Rules which is set out above it is clear that the said Rules were not made applicable to the Secretariat, the offices of the State Legislature Lokayukta, Public Service Commission High Court the Subordinate Courts under the Control and Superintendence of the High Court and all the establishments under the control of the Advocate General The 1975 Rules prescribed the qualifications and the pattern of a competitive examination for purposes of recruitment in substitution of what had been prescribed by the 1950 Rules in respect of subordinate offices to which the 1975 Rules applied Sub-rule (1) of R 20 of the 1975 Rules expressly provided thus

20 Repeal and validation — (1) The Rules for the recruitment of ministerial staff in the Subordinate offices published under notification No O-1119/IU 8 50 dated July 11 1950 as amended from time to time shall be and be deemed to have been repealed with effect from June 5 1974

12 It was after the promulgation of the 1975 Rules that the competitive examination, with which we are concerned, was held by the District Judge of Kanpur The said examination was held in September 1981 and its results were announced on July 25 1983 Respondent No 1 and many others appeared in the said examination The competitive examination was however held in accordance with the 1950 Rules The 1969 Amending Rules were not, however followed. Respondent No 1 who had appeared for the competitive examination was not successful. Aggrieved by the result of the examination he filed the writ petition before the High Court of Allahabad, out of which this appeal arises His principal contention before the High Court was that the competitive examination which had been held in accordance with the 1950 Rules was an unauthorised one and that it should have been held in accordance with the 1947 Rules as amended by the 1969 Amending Rules The High Court held that it was evident that the intention of promulgating the 1950 Rules was only to prescribe a syllabus different from what had been prescribed in the 1947 Rules but the modification made by the 1950 Rules did not however modify the rest of the 1947 Rules The High Court was of the opinion that therefore it follows that the 1950 Rules being later in time superseded 1947 Rules to the extent of its inconsistency After the enforcement of 1950 Rules competitive tests for holding selection for appointment to the Ministerial Establishment of Subordinate Courts was required to be held in accordance with the syllabus of 1950 Rules and not in accordance with Appendix II of 1947 Rules. In other respects the 1947 Rules continued to be effective

13 The High Court then found that on the promulgation of the 1969 Amending Rules the syllabus prescribed by the 1950 Rules could not be followed The High Court observed on this question as follows

The question however arises what was the effect of Subordinate Civil Courts Ministerial Establishment (Amendment) Rules.

1969 As noted earlier the Rules of 1969 were framed by the Governor amending Appendix II of 1947 Rules The notification dated September 20 1969 under which the Rules were enforced does not contain any reference to 1950 Rules It appears that while amending the 1947 Rules the Governor failed to notice that Appendix II of 1947 Rules had already been superseded by Rule 6 of 1950 Rules However it is evident that the intention was to prescribe different syllabus than that prescribed by 1950 Rules There is no doubt that by the 1969 Rules the Governor intended to lay down a syllabus for holding competitive examination for selection and appointment to the ministerial establishment of Subordinate Courts which was quite different from the syllabus prescribed by R 6 of 1950 Rules as well as Appendix II of 1947 Rules The 1969 Rules were also framed by the Governor in respect of the same subject matter as laid down by R 6 of 1950 Rules Since 1969 Rules were framed later in time by the same authority on the same subject it must be held that the syllabus prescribed by the Amending Rules superseded the earlier rules on the subject

14 The High Court gave one more reason for holding that the 1950 Rules were no longer in force in the year 1981 The High Court was of the view that the 1950 Rules having been repealed by R 20 of the 1975 Rules they were no longer effective from June 5 1974 It observed thus

The 1969 Rules no doubt purported to amend Rule 5 and Appendix II of 1947 Rules The language of the Rules of 1969 indicates that apart from the rules being in the nature of an amendment the Governor intended to lay down specific rules prescribing educational qualifications and syllabus for holding the examination for recruitment to the Ministerial Staff of the Subordinate Courts Even if the 1969 Rules could not be effective during the period the 1950 Rules were in force the same would be fully effective after June 5 1974 on the repeal of 1950 Rules We therefore hold that in any event after June 5 1974 recruitment to the ministerial staff of the Subordinate Courts could be held only in accordance with 1947 Rules read with 1969 Rules and not in accordance with 1950 Rules

15 The High Court was of the view that since within the judgeship of Kanpur the examination had not been held in accordance with the syllabus prescribed by the 1947 Rules as amended by the 1969 Amending Rules all those who were successful and selected for appointment had no legal right to be appointed. It accordingly quashed the examination held in 1981 by the District Judge of Kanpur the results of which had been announced in 1983 by its judgment dated April 12 1985 The High Court clarified that all the candidates who had applied for the 1981 examination were however entitled to appear for the fresh examination to be held by the District Judge of Kanpur It further observed that in the other Districts of Uttar Pradesh where examinations had been held under the 1950 Rules and which had not been challenged the selection and appointment made in pursuance thereof should be treated as valid and would not be rendered invalid on the ground that any other view would cause great hardship which will not be in the public interest The result of the judgment was that only those who had been selected or appointed on the basis of the competitive examination held by the District Judge Kanpur lost their appointments or the right to be appointed but all other candidates who had been selected on the basis of examinations held in accordance with the 1950 Rules in the rest of the State of Uttar Pradesh continued in their posts

16 Aggrieved by the judgment of the High Court the appellant who was one of the selected candidates in the Kanpur examination, has filed this appeal by special leave

17 In this case the deficiencies in the drafting of the rules and the inadvertence on the part of the High Court in complying with them pose some difficulty in arriving at a just solution There is no dispute that the 1947 Rules made appropriate provisions regarding the recruitment of candidates to the posts in the ministerial establishment in the Subordinate Courts in the former United Provinces and they continued to be in force till July 11 1950 On July 11 1950 the 1950 Rules were promulgated. They were applicable not merely to the ministerial establishments in Civil Courts but to the ministerial establishments in several other offices They were promulgated in supersession of all existing rules and orders on the subject They prescribed that recruitment to the ministerial

staff in a subordinate office to which the said rules were applicable should be made on the basis of a competitive test and also provided for the mode of calculation of vacancies the period during which competitive examinations should be held the subjects for the test and the marks assigned to each of them and the method of selection of successful candidates They also provided that appointments to higher posts in the ministerial staff of those offices should be made by promotion Rules 9 to 12 of the 1947 Rules and Appendix II to it which dealt with above topics thus stood superseded The other parts of the 1947 Rules which dealt with the nationality domicile and residence of the candidates their academic qualifications character and physical fitness the appointing authority probation and confirmation seniority punishment rate of pay transfers and regulations of conditions of service remained intact since the 1950 Rules did not make any provision as regards these topics Hence we do not agree with the argument urged on behalf of the appellant that the 1947 Rules stood superseded in their entirety by the 1950 Rules relying upon the opening words of the 1950 Rules which read thus

In exercise of the powers conferred by Article 309 of the Constitution of India, and in supersession of all existing rules and orders on the subject (Emphasis supplied)

18 In supersession of all existing rules and orders on the subject can only refer to those matters in the existing rules which correspond to the matters dealt with by the 1950 Rules We have explained earlier the other subjects in the 1947 Rules which were not covered by the 1950 Rules Hence the argument based on the assumption that the entire 1947 Rules had been repealed by implication and no amendment could be made to the 1947 Rules has to be rejected The High Court was therefore right in observing that the whole of the 1947 Rules did not come to an end on the promulgation of the 1950 Rules The problem however does not get solved thereby as we shall presently show

19 The 1969 Amending Rules specifically amended the 1947 Rules These 1969 Amending Rules appear to have been made after consultation with the High Court as can be seen from the letter dated November 30 1968 written by the Joint Registrar of the High Court to the Joint Legal Remembrancer of the Government of Uttar Pradesh. The 1969 Amending Rules were published in the Uttar Pradesh Gazette dated October 9 1969 By these Rules rule 5 of the 1947 Rules was amended Rule 5 dealt with the minimum academic qualification which a candidate for a post in the ministerial establishment in a Subordinate Civil Court should possess The other amendment related to the substitution of the former Appendix II which related to the subjects prescribed for the competitive examination and the marks assigned to each of them as it obtained before the 1950 Rules came into force by a new Appendix which has already been set out above

20 Rule 11 of the 1947 Rules which required the District Judge to hold the examination in accordance with the former Appendix II of the 1947 Rules which also stood superseded by the 1950 Rules in view of rules 5 and 7 of the 1950 Rules which dealt with the same subject was however not replaced nor a corresponding rule authorising the District Judge to hold the competitive examination in accordance with the new Appendix II was introduced by the 1969 Amending Rules into the 1947 Rules simultaneously The result was that while the new Appendix II again reappeared in the 1947 Rules prescribing certain subjects and marks assigned to them, the authority who should hold the competitive examination was not again prescribed in the 1947 Rules It was necessary to re-enact rule 11 of the 1947 Rules because it also stood repealed by the 1950 Rules which had made provision with regard to the topic contained in the former rule 11 The legal position that by the promulgation of the 1950 Rules the former rules 9 to 12 of the 1947 Rules stood repealed by necessary implication is accepted even by the High Court in its letter dated February 12 1973 referred to above Therefore the former rule 11 should have been re-enacted either in the same form or with modification and brought back to life to give effect to the new Appendix II reintroduced in the 1947 Rules. Without such reintroduction of rule 11 the mere reintroduction of Appendix II in the 1947 Rules by the 1969 Amending Rules would be meaningless and ineffective as the authority who can hold the examination remained

unspecified The method of selection of candidates also remained unspecified In effect whatever was provided in rules 9 to 12 of the 1947 Rules which was needed for conducting the examination and selecting candidates was however unavailable It is not correct to assume that the old rules 9 to 12 also automatically revived along with Appendix II without an express provision reintroducing them Here we are not trying to be technical It is to be noted that the 1969 Amending Rules do not expressly state that the 1950 Rules would no longer be applicable to the ministerial establishments of the Subordinate Civil Courts They also did not repeal the item referring to the Judicial Department —Subordinate Civil Courts which found a place in the schedule to the 1950 Rules The discontinuance of the application of the 1950 Rules to the ministerial establishments of the Subordinate Civil Courts can only be inferred by relying upon the rule of implied repeal provided the said rule is applicable An implied repeal of an earlier law can be inferred only where there is the enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law that is where the two laws — the earlier law and the later law — cannot stand together This is a logical necessity because the two inconsistent laws cannot both be valid without contravening the principle of contradiction The later laws abrogate earlier contrary laws This principle is however subject to the condition that the later law must be effective If the later law is not capable of taking the place of the earlier law and for some reason cannot be implemented the earlier law would continue to operate To such a case the rule of implied repeal is not attracted because the application of the rule of implied repeal may result in a vacuum which the law making authority may not have intended Now what does Appendix II contain? It contains a list of subjects and marks assigned to each of them But who tells us what that list of subjects means It is only in the presence of rule 11 one can understand the meaning and purpose of Appendix II In the absence of an amendment re-enacting rule 11 in the 1947 Rules it is difficult to hold by the application of the doctrine of implied repeal that the 1950 Rules have ceased to be applicable to the ministerial establishments of the Subordinate Civil Courts The High Court overlooked this aspect of the case and proceeded to hold that on the mere reintroduction of the new Appendix II into the 1947 Rules the examinations could be held in accordance with the said Appendix We do not agree with this view of the High Court

21 There is also no material before the Court to show that after the 1969 Amending Rules examinations were held in the different districts of Uttar Pradesh in accordance with the 1947 Rules as amended by the 1969 Amending Rules Nobody including the High Court appears to have taken notice of the amendment On the other hand examinations have been held according to the 1950 Rules even after the above 1969 amendment The District Judge has filed a counter affidavit stating that the examinations were held in 1981 in this case in accordance with the 1950 Rules and not in accordance with the 1947 Rules as amended by the 1969 Amending Rules The letter of the High Court dated February 12 1973 shows that it treated the 1950 Rules as the existing Rules in 1973 even after the 1969 Amending Rules came into force because it is stated in that letter as follows

> While following the procedure laid down in the existing rules published under Government Notification No O 1119/XI 8 50 dated July 11 1950 (which was adopted in supersession of rules 9 to 12 of the U P Subordinate Civil Courts Ministerial Establishment Rules 1947) and amplified in G O No O 2248/II 8 III 1950 dated August 30 1950 the District Judge should
>
> (Emphasis added)

Further it appears that in the year 1981 in some other districts of Uttar Pradesh examinations were held as per the 1950 Rules This is borne out by the observation of the High Court in its judgment where it has expressed its reluctance to set aside the results of the examinations in the other districts and confined the operation of its judgment to Kanpur District only The 1969 Amending Rules appear to have been ignored by some District Judges In the circumstances having regard to the lacuna created by the non repromulgation of rule 11 of the 1947 Rules it has to be held that there was no effective substitution of the 1950 Rules brought about by the 1969 Amending Rules The 1950 Rules

should therefore be held to be operating even in the year 1981 Hence the examinations held according to them cannot be held to be bad

22 We do not agree with the view of the High Court that the 1950 Rules have been repealed by the 1975 Rules insofar as the Subordinate Civil Courts are concerned It is true that rule 20 of the 1975 Rules clearly stated that the 1950 Rules had been repealed But the 1975 Rules did not apply to the subordinate courts under the control and superintendence of the High Court Hence the 1950 Rules insofar as they applied to the subordinate courts continued to be in force The finding of the High Court on this question is erroneous and is liable to be set aside

23 Moreover this is a case where the petitioner in the writ petition should not have been granted any relief He had appeared for the examination without protest He filed the petition only after he had perhaps realised that he would not succeed in the examination The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there The same yardstick should have been applied to the candidates in the District of Kanpur also They were not responsible for the conduct of the examination

24 For the foregoing reasons we feel that the judgment of the High Court should be set aside We accordingly set aside the judgment of the High Court and dismiss the Writ Petition The appellant and all other successful candidates at the 1981 examination held in Kanpur shall be appointed in accordance with the Rules We further direct that they shall be given the salary allowances increments and seniority to which they would have been entitled but for the judgment of the High Court But they will not be entitled to any salary and allowances for the period during which they have not actually worked. We also make it clear that if in any other centre selections and appointments have been made on the basis of the 1969 Amending Rules they shall remain undisturbed

25 The order passed by the High Court in the connected Writ Petition No 10224 of 1983 on its file is also set aside Similarly the order passed in Writ Petition No 5073 of 1984 on the file of the High Court is also reversed. There shall be a common order in these connected cases as directed in this appeal.

26 The appeal is accordingly allowed. No costs

27 The High Court may take steps, if it so desires to promulgate a fresh set of Rules of recruitment for the staff in the subordinate courts early

Appeal allowed.

1986 ALL L J 673

(SUPREME COURT)

(From Allahabad)

E. S VENKATARAMIAH AND SABYASACHI MUKHARJI, JJ

Civil Appeal No 1360 of 1986 D/ 23-4-1986

Onkar Singh and others Appellants v Regional Transport Authority Agra and others Respondents

Motor Vehicles Act (4 of 1939), Ss. 68-C, 68 D, 68-F(1 D),Proviso — Draft scheme — Period for its approval cannot be longer than 3 to 5 years — Draft scheme pending approval for 25 years — Scheme quashed.

The proviso to S 68-F(1 D) which provides that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published under S 68-C of the Act expires after such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under sub-sec (3) of S 68 D indicates the legislative intention regarding the maximum period that may be spent on the proceedings which intervene between the date of publication of the draft scheme under S 68-C and the publication of the approved or modified scheme under S 68 D(3) It suggests that it cannot be longer than three to five years which is usually the period during which a permit can be in force without renewal as provided in S 58 (Para 2)

The draft scheme in dispute published under S 68 C on June 25 1960 and which has not yet

ED/ED/C293/86/VVG

been approved even though 25 years have elapsed since its publication deserves to be quashed It could never have been in the contemplation of Parliament that the period for approving a scheme with or without modification or for rejecting it could be twenty five years as in this case (Paras 2 4)

Cases Referred	Chronological	Paras
AIR 1986 SC 119	(1985) 4 SCC 190	4
AIR 1986 SC 242	(1985) 4 SCC 169	4
AIR 1985 SC 516	(1985) 2 SCR 790	4

VENKATARAMIAH, J — The appellants are carrying on the business of running stage carriages in the State of Uttar Pradesh They had obtained temporary permits under Sec 68 F(1 C) of the Motor Vehicles Act 1939 (hereinafter referred to as the Act) on the route Somna Naujheel. They could not obtain permits under Chapter IV of the Act to operate on the said route since a scheme published under Sec 68 C of the Act in the year 1960 was in force It would appear that the Uttar Pradesh State Road Transport Corporation (hereinafter referred to as the Corporation) applied for fifteen temporary permits for operating its stage carriages on the route in question and obtained them from the Regional Transport Authority Agra under S 68 F(1 A) of the Act as per its order dated 31 1 1984 But the Corporation introduced only five services against fifteen permits Thus there were ten vacancies The Regional Transport Authority granted ten temporary permits to ten private operators in those ten vacancies One Davender Pal Singh who was holding a non temporary permit issued under Chapter IV of the Act filed a revision petition under Sec 64 A of the Act before the State Transport Appellate Tribunal The petition was dismissed On account of the pressure of traffic the number of temporary permits was increased to thirty four The Corporation was granted these additional permits But it failed to operate its services under all the permits issued to it. The private operators who wanted to operate the vehicles were not granted temporary permits The appellants were asked to stop plying their vehicles under the temporary permits obtained by them Aggrieved by the stoppage of the running of their vehicles, they filed a writ petition in the High Court of Allahabad in Civil Miscellaneous Writ Petition No 1613 of 1985 contending that once temporary permits were issued under Sec 68 F(1 C) of the Act they would remain in force until the draft scheme published under Sec 68 C was approved under Sec 68 D of the Act The High Court being of the opinion that on permits being issued to the State Transport Undertaking i e the Corporation in this case the temporary permits issued to other private operators under Sec 68 F(1 C) of the Act came to an end dismissed the writ petition Aggrieved by the judgment in the writ petition the appellants have filed this appeal by special leave When this petition came up for admission on April 1 1986 before this Court it was urged by the appellants that the draft scheme published under Sec 68 C of the Act having become stale was liable to be quashed in view of some of the recent decisions rendered by this Court On the basis of the above submission notices were issued to the State Government and the Uttar Pradesh State Road Transport Corporation — the respondents herein to show cause why the draft scheme should not be quashed The counter affidavit has been filed on behalf of the Corporation opposing the prayer made in this appeal

2 The draft scheme admittedly was published under Sec 68 C of the Act on June 25 1960 more than 25 years ago and it has not yet been approved It is still in the stage of a draft scheme We have been taken through the counter affidavit filed on behalf of the Corporation setting out the several steps taken in the proceedings before the Hearing Authority under Sec 68 D of the Act On going through the counter affidavit we are not convinced that sufficient grounds have been made out for sustaining the draft scheme at this distance of time It is seen that there is tremendous pressure for the grant of permits to ply stage carriages on the route Yet the State Transport Undertaking which is expected to provide adequate efficient economic and co-ordinated service has failed to do so even after twentyfive years have elapsed It may be that some operators had adopted delaying tactics But the Hearing Authority under Sec 68 D of the Act should have taken necessary steps to conclude the proceedings early The delay of nearly a quarter of a century is inexcusable The draft scheme has virtually become out moded We find that there has

been clear disobedience of the provisions of the Act The proviso to Sec 68 F(1 D) of the Act which provides that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published under Sec 68 C of the Act expires after such publication such permit may be renewed for a limited period but the permit so renewed shall cease to be effective on the publication of the scheme under sub-section (3) of Sec 68 D of the Act indicates the legislative intention regarding the maximum period that may be spent on the proceedings which intervene between the date of publication of the draft scheme under Sec 68 C of the Act and the publication of the approved or modified scheme under Sec 68 D(3) of the Act It suggests that it cannot be longer than three to five years which is usually the period during which a permit can be in force without renewal as provided in Sec 58 of the Act. It could never have been in the contemplation of Parliament that the period for approving a scheme with or without modification or for rejecting it could be twentyfive years as in this case The undesirable effects of the inordinate delay in completing the proceedings under Sec 68 D of the Act are many Two of them are

(i) it exhibits lack of interest on the part of the administration in bringing into effect administrative decisions without undue delay and

(ii) the public interest suffers as the members of the public are denied normal stage carriage services of an improved kind because the operators who are operating on temporary permits would have no incentive to develop any enduring good will and naturally not interested in providing better services

3 The period of such uncertainty should not be allowed to continue any longer in the instant case

4 In Yogeshwar Jaiswal v State Transport Appellate Tribunal, (1985) 2 SCR 790 (AIR 1985 SC 516) this Court has explained how inordinate delay in acting under section 68 D of the Act would prejudice the public interest Following the above decision in Phool Chand Gupta v Regional Transport Authority Ujjain (1985) 4 SCC 190 (AIR 1986 SC 119) and in Shri Chand v Govt of U P Lucknow (1985) 4 SCC 169 (AIR 1986 SC 242) this Court has quashed the schemes published under section 68 C of the Act since they had not been approved by the authority concerned under section 68 D of the Act within a reasonable time Following the three decisions referred to above we quash the scheme which is the subject matter of this appeal and direct the Hearing Authority under section 68 D of the Act not to proceed with the hearing of the matter It is now open to the Corporation to publish, if it so desires a fresh scheme under section 68 C of the Act. We however permit the Corporation and others who are at present operating stage carriage vehicles on the route in question pursuant to the permits issued under section 68 F(1 A) or under section 68 F(1 C) of the Act as the case may be to operate their stage carriages until 15-10-1986 If a fresh scheme is published under section 68-C of the Act within that period it shall be open to the Corporation to apply for fresh temporary permits under section 68 F(1 A) of the Act. On permits being granted under section 68 F(1 A) of the Act all the permits now issued under section 68 F(1 A) or under section 68 F(1 C) of the Act shall come to an end Until a fresh draft scheme is published under section 68 C of the Act, it shall be open to any person to make applications for a stage carriage permit under Chapter IV of the Act The Regional Transport Authority may also grant if it finds that it is necessary to do so in the public interest temporary permits under section 62 of the Act until the draft scheme is published

5 This appeal is accordingly allowed There will be no order as to costs.

Appeal allowed.

1986 ALL L J 675

(LUCKNOW BENCH)

P DAYAL, J

Mazahar Abbas, Applicant v Smt. Sakeena, Opposite Party

Criminal Revn. No 303 of 1982 D/ 11 10-1985

(A) Criminal P C (2 of 1974), Ss. 128 and 125 — Order for maintenance — Can be enforced by any Magistrate.

CD/DD/B618/86/BNP

Section 128 lays down the provisions for enforcing the order which was passed under S 125 Cr P C It has been clearly laid down that such an order may be enforced by any Magistrate in any place where the person against whom it is made may be on such Magistrate being satisfied as to the identity of the parties and the non payment of the allowance due The forum for enforcing the order passed under S 125 Cr P C as laid down in S 128 is the Magistrate where the person against whom that order was made resides (Para 5)

(B) Criminal P C (2 of 1974), S 125(3) Proviso — Offer to maintain — Cannot be made at the time of execution and enforcement of order under S 125

The proviso to S 125(3) itself makes it clear that a Magistrate may make an order under S 125 Cr P C and the stage for considering the offer is when the parties evidence is recorded in support of the respective claims This proviso does not lay down that the offer to maintain can be made even after the decision on this point has been given after recording the evidence of the parties or that such an offer can be made at the time of execution and enforcement of the order (Para 9)

(C) Criminal P C (2 of 1974), S 421 and 125(3) — Arrears of maintenance amount — Can be realised by attaching salary of the husband

Under Section 421 Cr P C the recovery of fine can be made by issuing warrant for the levied amount by attachment and sale of any moveable property belonging to the offender Sub section (3) of Section 125 Cr P C empowers the Magistrate to issue a warrant for levy amount due in the manner provided for levying the fine if there has been breach of the Magistrate s order It follows that the amount of the maintenance allowance can be realised unde S 421 Cr P C The salary of the employee is movable property and the same can be attached under clause (a) of sub-section (1) of Section 421 Cr P C 1980 Lucknow LJ 329 Distinguished (Para 11)

Cases Referred	Chronological	Paras
AIR 1984 SC 718	1984 Cri LJ 647	11
1980 Lucknow LJ 329		11
1974 Cri LJ 171 (Cal)		11
AIR 1960 Punj 221	1960 Cri LJ 516	10
(1949) 2 KB 481	(1949) 2 All ER 155	Seaford Court Estates Ltd v Asher 11

M A Siddiqui for Applicant S K Mehrotra for Opposite Party

ORDER — Mazhar Abbas filed this revision against Smt Sakeena challenging the order dated 7 6 82 passed by Sri Narendra Bahadur Singh Munsif Magistrate Akbarpur district Faizabad rejecting his objections

2 The parties were married to each other The opposite party Smt Sakeena moved an application for maintenance under S 125 Cr P C which was allowed on 1 12 81 and her maintenance allowance was fixed at Rs 150/ per month by the Magistrate against the revisionist The maintenance allowance was payable with effect from 25 4-80 The husband Mazhar Abbas filed a criminal revision No 2 of 1982 which was dismissed

3 Opposite party Smt Sakeena moved an application under S 128 Cr P C with a prayer for realisation of Rs 3200/ which had become due The revisionist Mazhar Abbas filed objections which were dismissed and the Magistrate passed an order for realisation of the amount of Rs 3200/ by deducting a sum of Rs 200/ p m from the salary of the revisionist

4 The revisionist claimed in this revision that he was employed at Lucknow in the vigilance section of the Police Department and that the courts at Lucknow had jurisdiction under S 128 Cr P C to realise the amount of maintenance from him. He raised second point to the effect that he had offered to maintain Smt Sakeena in his objections and the learned Magistrate ought to have decided this point Thirdly he claimed that the arrears of the amount of maintenance allowance could not be realised from his salary

5 The revisionist relied on the provisions of S 128 Cr P C which read as follows —

128 A copy of the order of maintenance shall be given without payment to the person in whose favour it is made or to his guardian if any or to the person to whom the allowance is to be paid and such order may be enforced by any Magistrate in any place where the

person against whom it is made may be on such Magistrate being satisfied as to the identity of the parties and the non payment of the allowance due

It is evident from the wordings of the aforesaid S 128 that this section (S 128) lays down the provisions for enforcing the order which was passed under S 125 Cr P C It has been clearly laid down that such an order may be enforced by any Magistrate in any place where the person against whom it is made may be on such Magistrate being satisfied as to the identity of the parties and the non payment of the allowance due This provision has been specifically introduced by the legislature for meeting the situation where a person against whom an order is passed lives outside the jurisdiction of that Magistrate who had passed the order as is the case in the present proceedings The revisionist started living at Lucknow Therefore the order can be enforced at Lucknow only subject to the condition that the Magistrate in Lucknow ha to satisfy himself about the identity of the parties and the non payment of the allowance due The forum for enforcing the order passed under S 125 Cr P C as laid down in S 128 is the Magistrate where the person against whom that order was made resides

6 Sub-section (3) o S 125 Cr P C lays down that if any person so ordered fails without sufficient cause to comply with the order any such Magistrate may for every breach of the order issue a warrant for levying the amount due in the manner provided for levying fines and may sentence such person for the whole or any part of each month s allowance remaining unpaid after the execution of the war ant to imprisonment for a term which may extended to one month or until payment if sooner made

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due

7-8 The procedure for executing the order passed under S 125 is laid down in S 126 Cr P C which deals that proceedings under S 125 may be taken against any person in any district where he is or where he or his wife resides or where he last resided with his wife or as the case may be with the mother of the illegitimate child So the proceedings may be taken against a person for realisation of the maintenance allowance in any district where he is living and the mode of the enforcement of the order of maintenance is provided in S 128 Cr P C

9 As about the point of offer to maintain it has been laid down in second proviso to Section 125(3) that if any person offers to maintain his wife on condition of living with him and she refuses to live with him such Magistrate may consider any grounds of refusal stated by her and may order under this section notwithstanding such offer if he is satisfied that there is just ground for so doing This proviso itself makes it clear that a Magistrate may make an order under S 125 Cr P C and the stage for considering the offer is when the parties evidence is recorded in support of the respective claims This proviso does not lay down that the offer to maintain can be made even after the decision on this point has been given after recording the evidence of the parties or that such an offer can be made at the time of execution and enforcement of the order

10 The revisionist relied upon the case of Smt Ranjit Kaur v Dr Avtar Singh AIR 1960 Punj 221 in which case it was argued that the proviso may be taken into consideration only after an order for the payment of maintenance allowance has been made by the Magistrate under sub section (1) of S 125 and the same is desired to be enforced by the wife and it was held that if this argument is accepted it would mean that in an application under S 488 Cr P C for fixation of maintenance allowance the court is not entitled to take into consideration the offer made by the husband to maintain his wife on the condition of her living with him even if such offer is made in good baith and even though the wife had no just cause to stay away from her husband But this referred to the proviso of sub section (1) As about the Proviso to sub-section (3) only this much was observed that this point was not directly involved and this cannot be treated as authoritative on this point while the first part of the proviso was available to the husband even under sub section (1) at the time of the decision of the application as well as at the time of the enforcement of the order As about the other proviso it has been observed

If that be so then the latter part of the

proviso would be applicable as well and the trial Magistrate is bound to consider the grounds given by the wife if any while refusing the offer made by the husband to maintain her on condition of her living with him

Thus there has not been a definite finding on the point that the Magistrate is bound to record evidence again on the point of offer to maintain when he decided that point earlier and such an offer is again made at the time of the enforcement of the order of maintenance allowance In the instant case the learned Magistrate has rightly observed that it was not proper to pass another order on the same point The bona fide of the offer was thus considered by the Magistrate

11 The revisionist then contended that the arrears of the amount of maintenance allowance could not be realised from his salary He referred to S 60(1) and its proviso of Cr P C But it is not a case where the provisions of Section 60 are applicable nor the revisionist comes under the definition of labour etc as contemplated by section 60 C P C Under Section 421 Cr P C the recovery of fine can be made by issuing warrant for the levied amount by attachment and sale of any moveable property belonging to the offender Sub section (3) of Section 125 Cr P C empowers the Magistrate to issue a warrant for levy amount due in the manner provided for levying the fine if there has been breach of the Magistrate s order It follows that the amount of the maintenance allowance can be realised under S 421 Cr P C The salary of the employee is movable property and the same can be attached under clause (a) of sub-section (1) of Section 421 Cr P C The revisionist relied on the case of Paragi Lal v Smt Munni Devi 1980 Lucknow LJ 329 in which case the Special Magistrate who had no power to direct the employer of the applicant for deducting 1/3rd of the amount from the applicant s salary and remit the same to the opposite party had passed such an order and it was held that the Special Magistrate could not have given a direction to the Executive Engineer and he could have only issued a warrant to the Collector under Section 421(b) Cr P C Thus in this case also a warrant may be issued to the Collector for attaching a sum of Rs 200/ per month from the salary of the revisionist of sixteen months But the order of the rejection of the objections of the revisionist is not liable to be set aside on this ground The case of Smt Renuka Paul v Dhirendra Paul 1974 Cri LJ 171 (Cal) was considered in the cited case but the provisions of Section 421 are divided into two parts The sub-clause (a) of sub-section (1) reads that when an offender has been sentenced to pay a fine the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways that is to say it may —

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender

(b) issue a warrant to the Collector of the district authorising him to realise the amount as arrears of land revenue from the movable or immovable property or both of the defaulter

Thus the Magistrate who passed the order could under clause (a) of sub section (1) of Section 421 himself issue a warrant for attachment of the salary of the offender He was authorised to take recourse to any of these clause (a) or (b) or take recourse to both the clauses (a) and (b) The facts of the cited case were different as the Executive Engineer was directed to remit the amount to the opposite party and not to the Court or the Magistrate who had jurisdiction to pass such an order and also a claim of recovery for period of more than a year was made The cited case referred to clause (b) of sub-section (1) of Section 421 Cr P C Any clarification regarding clause (a) of sub section (1) of Section 421 has not been given in it

12 Yet the stand canvassed on behalf of the revisionist would obviously lead to anomalous and starting results In fact it would mean that even though a decree was passed against the revisionist and the opposite party was held entitled to maintenance allowance she would not be paid the same due to some or the other obstruction or objection raised by the revisionist It is well settled law that if an interpretation leads to an anomalous and mischievous results the same is to be avoided For that the observations made in the case of Seaford Court Estates Ltd v Asher (1949) 2 KB 481 may be cited

A Judge believing himself to be fettered by the supposed rule that he must look to the

language and nothing else laments that the draftsmen have not provided for this or that or have been guilty of some or the other ambiguity it would certainly save the Judge s trouble if Acts of Parliament were drafted with divine prescience and perfect clarity In the absence of it when a defect appears a Judge cannot simply fold his hands and blame the draftsmen He must set to work on the constructive task of finding the intention of Parliament and he must do this not only from the language of the statute but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give force and life to the intention of the legislature

Also it was held in the case of A R Antulay v Ramdas Srinivas Nayak AIR 1984 SC 718 that it is a well established canon of construction that the Court should read the section as it is and cannot rewrite it to suit its convenience nor does any canon of construction permit the Court to read the section in such manner as to render it to some extent otiose

13 Therefore this revision fails and is hereby dismissed The stay order is vacated

Revision dismissed

1986 ALL L J 679

(LUCKNOW BENCH)

D N JHA J

Chheda Applicant v State of U P Opposite Party

Criminal Misc Case No 1959 of 1985 D/ 1 8 1985

(A) Criminal P C (2 of 1974), S 439 — Grant of bail — Considerations — Past criminal history — Person cannot be said to have no criminal history because he is not convicted in a case

If a person involved in a large number of cases escapes conviction on account of technicalities and niceties of law it would not mean that the man has a clean slate It is also to be noted that owing to delay in trial so many things happen on account of which accused are at times acquitted Therefore mere acquittal cannot be a sound yardstick to enunciate the principle that unless and until a person has not been convicted it cannot be said that the man does not have a criminal history Such a person who has past criminal history cannot be granted bail

(Paras 3 and 4)

(B) Precedents — Even obiter dicta of High Court is binding on subordinate courts — Subordinate courts are not expected to give expression contrary to the observation made by the High Court

(Para 3)

Jitendra Misra for Applicant

ORDER — This is a second bail application The first bail application was rejected by this Court vide order dt 3 4-1985 It may be mentioned that I had admitted Girish to bail keeping in mind that he had no past criminal history

2 In this second bail application it has been brought to my notice that the learned IIIrd Additional Sessions Judge Sri S K Srivastava allowed bail to Ram Autar on 7-6 1985 and co accused Vishwanath has been admitted to bail vide order of the Incharge Sessions Judge Sri Munendra Saxena dt 8 7 1985 Both the learned Judges have not applied their mind to the order passed by this Court Sri Munendra Saxena has even gone to the extent of observing —

The criminal history of the applicant accused will mean ending into conviction and not the involvement in cases

It appears that the learned Judge is not abreast with the surroundings in which the criminal justice is supposed to be dispensed by the courts He is also not abreast with the views that are being expressed from time to time by the Supreme Court with respect to criminal case It is not merely the conviction of an individual in a case that would tantamount to criminal history It is a latent fact that now a days crimes are being committed brazenly and witnesses shudder to appear against hard core criminals I wonder if cases have come to the notice of the Court that even complainants in criminal cases turn hostile It is high time

the learned Sessions Judge understand the criminal law and bear in mind the interest of the society for which the law has to be administered The most important function of the State is that it acts as the guardian of law The object of redress is to restore the position demanded by the rule of right to substitute justice for injustice and to compel the wrong-doer to repent for causing injury to the person because it is an act contrary to the order peace and well being of the society

3 If a person being involved in a large number of cases escapes conviction on account of technicalities and niceties of law it would not mean that the man has a clean slate

It is also to be noted that on account of delay in trial so may things happen on account of which accused are at times acquitted Therefore mere acquittal cannot be a sound yardstick to enunciate the principle that unless and until a person has not been convicted it cannot be said that the man does not have a criminal history It is no doubt true that false implications by police and the investigating agency also cannot be lost sight of but those cases normally relate to offence under Ss 395 396 399/402 I P C and S 25Arms Act etc and are often utilised as the common weapons to deal with person who try to act in a hostile manner with the police or have incurred their displeasure However even involvement in those cases at times would not ipso facto absolve the persons altogether in aforementioned offences The Courts have to collect an over all picture on hearing the learned counsel for the parties for purposes of admitting a person to bail It is not only the duty of the police to provide security to the society but the Courts have also a very important role to play in safeguarding the innocent society which is not in a position to have individual police protection I have no hesitation in observing that the Incharge Sessions Judge by making observation in his order dt 8 7 1985 tried to disagree with the order passed by this Court It is not expected from the subordinate courts to give expression contrary to the observations made by the High Court Even obiter dicta of the High Court has a binding effect on the subordinate courts This Court has made certain observations while admitting Girish to bail and therefore the Incharge Sessions Judge Sri Munendra Saxena and the IIIrd Additional Sessions Judge Sri S K Srivastava should have doubly assured their conscience before admitting the co accused in the case to bail The extraneous exercise of discretion by the subordinate courts at times places this Court in a very embarrassing situation and such a practice should be avoided by the subordinate courts

4 In view of my observations already made in the order rejecting the bail I see no good ground to revise my view with respect to past criminal history of Chheda He is not entitled to bail on merits

5 However in view of the medical certificate attached with this application with respect to ailment of applicant s wife I admit Chheda to a short term bail for a period of four months which will commence to run from the date of release of the applicant from jail on his furnishing adequate sureties and a personal bond in the like amount to the satisfaction of the Chief Judicial Magistrate Sitapur to enable him to provide medical facilities to his ailing wife The applicant shall surrender after expiry of the period

6 Let a copy of the order be sent to the district Judge Sitapur for communication to the concerned Additional District and Sessions Judges

Order accordingly

1986 ALL L J 680

B L YADAV J

Abdul Razzaq Petitioner v Deputy Director of Consolidation Meerut and others Respondents

Civil Misc Writ Petn No 9105 of 1975 D/ 28 1 1986

U P Consolidation of Holdings Act (5 of 1954), S 172(2) — Succession — Holding of — Mohammedan widow — Under Personal Law she is absolute owner of the land — Widow becoming Bhumidar — No steps taken by claimant to evict her for about 50 years — Succession to her holding would be governed by S 172(2)(a)(ii) and not S 172(2)(a)(i) — (Constitution of India, Art 226)

CD/ED/B475/86/VVG

The succession to the holding of a Mohammedan widow who is an absolute owner under the personal law applicable to her and against whom no steps were taken by the claimant to evict her for about 50 years and who had become Bhumidar of the holding under U P Agricultural Tenants (Acquisition of Privileges) Act would be governed by the provisions of S 172(2)(a)(ii) and not by sub-sec (2)(a)(i) AIR 1976 SC 844 Distng
(Para 9)

Furthermore when the claimant who was not the heir of the widow had taken no steps to evict the widow under the various Rent Acts such as Agra Tenancy Act 1926 U P Tenancy Act 1939 etc then in force for about 50 years and had also not taken any steps to cancel the sanad of Bhumidari granted to the widow the order refusing his claim to the widow s holding passed by the Consolidation Authorities can be said to have done substantial justice and with such an order the High Court would not interfere under Art 226 of the Constitution (Paras 9 10 11)

Cases Referred Chronological Paras

AIR 1976 SC 844 / 9
AIR 1973 All 196 1973 Rev D c 142
8 9

R H Zaidi for Petitioner Standing Counsel for Respondents

ORDER — This petition under Art 226 of the Constitution is directed against the orders passed by the consolidation authorities

2 The facts in brief are that under S 9A(2) of the U P Consolidation of Holdings Act (for short the Act) the petitioners filed an objection stating that Smt Hakiman and Smt Sharifan (in the pedigree given in para 2 of the petition) have remarried hence their interest devolved upon the petitioner Abdul Razzaq and he became the sole bhumidhar

3 The petitioner s case was denied by Smt Sharifan respondent 4 whereas Smt Hakiman had died earlier and in her place Atiq respondent 5 was made party and he contested the case that Smt Hakiman did not remarry and in any case she had deposited ten times rental and became bhumidhar along with the petitioner and other co-tenure holders including Smt Sharifan and had acquired bhumidhari rights under the provisions of U P Agricultural Tenants (Acquisition of Privileges) Act She even much before her remarriage became bhumidhar to the knowledge of the petitioner who did not object nor he filed any objection hence he was estopped from denying the same and in any case she acquired transferable interest and became full fledged bhumidhar and after her death her interest cannot devolve on the petitioner

4 The consolidation authorities decided the case against the petitioners and these orders have been challenged in the present petition

5 Sri R H Zaidi appearing for the petitioner urged that Smt Sharifan respondent 4 has remarried hence her interest devolved on the petitioner But it is worth mention that she died long ago and she had executed a will also in favour of Haneef Choney Kalu Bhure and Aqeel sons of Tausif resident of village Neknampur Pargana Putha Tahsil Garh District Ghaziabad and these legatees had later on transferred their interest in favour of Smt Mahmmoda and Smt Nafeesa both of village Wiat Pargana and tehsil Garh District Ghaziabad by a registered sale deed dt 8 3 82 An application was filed by the petitioner that these transferees may be made respondents in place of the deceased Sharifan But when the writ petition came up for hearing the application for impleadment moved by the petitioner was also listed for hearing Earlier the counsel for the applicant pressed the application for impleadment and an order was passed on 17 12 85 for impleadment of Smt Mahmmodan and Smt Nafeesa But before the order could be signed the counsel for the petitioner made a statement that the order may not be signed and he would think over the matter in respect of pressing the application for impleadment On the next date he made a statement that he does not want to press the application hence that may be dismissed as not pressed Therefore I have no option but to dismiss the same as not pressed and now the result is that Smt Sharifan respondent 4 has died and no substitution application has been filed and an order was passed on 28th Sept 1983 that Smt Sharifan had died and her name was deleted There is an endorsement to this effect on page 2 of the writ petition I have accordingly no option but to dismiss the

writ petition against Smt Shanfan respondent 4 as having abated

6 There is also an application purported to have been filed on behalf of the legatees and their transferees for abatement of the writ petition and in view of the facts stated above this application has to be allowed and the writ petition is ordered to have abated against respondent 4

7 As regards the remarriage of Smt Hakiman learned counsel for the petitioners urged that after her re-marriage the succession would be governed in accordance with S 171 of the Act and the petitioner would succeed being father s father s son s son The learned counsel placed reliance on Ram jivan v Smt Phoola AIR 1976 SC 844

8 Learned counsel for the respondent on the other hand urged that Smt Hakiman appears to have remarried before 1336 Fasli (1928 AD) and the Agra Tenancy Act 1926 was then in force and thereafter U P Tenancy Act 1939 was enforced and thereafter U P Zamindari Abolition & Land Reforms Act came into force and she was tenant in her own right immediately before the enforcement of the U P Z A and L R Act Hence under S 19 she became a Sirdar and having deposited ten times rental she acquired bhumidhari rights and the petitioner did not take any step to eject Smt Hakiman and in his knowledge she deposited ten times rental hence in any case she became a co-tenant by estoppel and acquiescence It was further urged that she became full fledged bhumidhar after depositing ten times rental and she was a Mohammedan lady and she did not have a life estate and was not a limited owner S 172(2)(a)(ii) of the Act was applicable and the holding shall devolve on her own heirs mentioned in S 174 and S 172(2)(a)(i) would not apply nor the holding shall devolve on the nearest surviving heir in accordance with S 171 of the Act In this connection Kishan Singh v Babu Singh 1973 Rev Dec 142 (AIR 1973 All 196) was relied upon

9. I am in respectful agreement with the principles of law laid down in Ram jiwan v Smt Phoola, (AIR 1976 SC 844) (supra) But as the facts of the present case are entirely different, I am of the opinion that the principles laid down in that case would not apply That was a case not in respect of a lady who was according to the present law (personal law) applicable entitled to the holding absolutely Whereas in the instant case Smt Hakeeman was entitled to the holding absolutely in accordance with the present law (personal law) applicable to her For the last about 50 years the petitioner did not take any step to file a suit for her ejectment Further she had deposited ten times rental and became bhumidhar under the provisions of U P Agricultural Tenants (Acquisition of Privileges) Act I am accordingly of the view that the provisions of S 172(2)(a)(ii) would apply and not the provisions of S 172(2)(a)(i) I am of the view that the facts of Kishan Singh v Babu Singh (supra) were similar and Hon ble J S Trivedi J held that in such circumstances similar to the present case the succession would be governed not by S 172(2)(a)(i)

10 There is another aspect of the matter Smt Hakiman has acquired Sanad Bhumidhan and the declaration granted in her favour was not got cancelled by the petitioner in view of the procedure provided under S 137 A within a period of three years as provided in Appendix III Serial 11A Hence the claim of the petitioner to get the certificate cancelled became time barred

11 There is yet another aspect of the matter that the jurisdiction under Art 226 of the Constitution is not like an appellate court Even though some order may appear to be erroneous or even without jurisdiction this Court can decline to exercise jurisdiction under Art. 226 of the Constitution in case substantial justice has been done In the instant case I find that Smt Hakiman was a widow since prior to 1336 Fasli for the last about 50 years and the petitioner being quite alive to the situation, did not take any initiative to eject her or to file a suit against her either under the Agra Tenancy Act 1926 or under the U P Tenancy Act 1939 Even before the commencement of consolidation operation the petitioner did not file any suit either under S 229 B or under S 209 of the Act and she has died long ago and her son Atiq from her second husband has been made a party as respondent 5 Under these circumstances I am of the view that the substantial justice has been done between the parties Further there is a Latin Maxim Vigilantibus Non Dormien

dibus Jura Subvenunt which obviously means that law assists those who are vigilant and not those who sleep over their rights In the instant case Smt. Hakiman became widow about more than 50 years ago and the petitioner was sleeping over the matter hence I am of the view that now it is too late to grant discretionary relief under Art 226 of the Constitution to him under the circumstances of the case

12 In view of the discussions made hereinabove the petition lacks merit and is accordingly dismissed Under the circumstances there shall be no order as to costs

Petition dismissed

1986 A.L.L. L J 683

N N SHARMA J

Harihar Sharma Applicant v State of U P and another Opposite Parties

Criminal Revn No 2252 of 1984 D/ 18 10 1985

Criminal P C (2 of 1974) Ss 323, 223, 399 and 401 — Penal Code (45 of 1860) Ss 307 and 323 — Case under S 307 against accused pending in Sessions Court — Accused filing complaint under S 323 before Magistrate against complainant in sessions case — Magistrate exercising discretion under S 323 Cr P C not to commit case to Sessions as it was not cross case — Revisional order of Sessions Judge directing Magistrate to commit case held, was improper

The rule as regards the cross cases to be tried by one Court is only one of prudence to avoid different standards being applied in two cases arising out of the same transaction Under S 323 Cr P C the Magistrate after scrutinising the evidence has a discretion in the matter of committing the case to the Sessions Court The discretion of the trial court should not be lightly interfered with unless it appears that it was exercised arbitrarily by relying on irrelevant evidence or suffered from some fundamental legal error or was exercised without jurisdiction Where a case of attempt to murder under S 307 against the accused was pending in the Sessions Court and a complaint under S 323 I P C was filed by the accused against the complainant in the Sessions case and the Magistrate after scrutinising the facts and evidence gave good reasons to exercise his discretion not to commit the case to the Sessions Court because the complaint before him disclosed only an offence under S 323 I P C which was within his jurisdiction and was not a cross case in respect of the sessions case as the two cases did not arise out of the same occurrence and were separate and distinct the Magistrate must be held to have exercised his discretion properly and therefore the revisional order of the Sessions Judge interfering with the discretion of the Magistrate without giving cogent grounds and directing him to commit the case to the Sessions Court could be improper and must be set aside It would be open to the accused in the Sessions trial also to put forward counter version if both the incidents sprang out of the same occurrence according to the defence 1981 All LJ 458 Rel on (Paras 17 18)

Cases Referred Chronological	Paras
1981 All LJ 458	17

V K. Shukla, for Applicant Jagdish Tewari A G A for the State P C Sharma for Opposite Party No 2

ORDER — List has been revised

2 This revision was already part heard yesterday when it was taken up in the revised list

3 I have heard Sri V K Shukla learned Advocate for revisionist and learned A G A on behalf of State

4 Sri P C Sharma learned Advocate for opposite party No 2 did not turn up yesterday or today

5 This revision is directed against order dated 13 7 1984 recorded by Sri S K Gupta learned IInd Additional Sessions Judge Etah in Criminal Appeal No 82 of 1981 By the impugned order learned Sessions Judge set aside the order of the Magistrate dated 30 5 1981 and directed him to commit the case to the Court of Session

6 The incident giving rise to this revision occurred on 2 11 1977 at 6 30 p m when the

accused, who are Narayan Prasad and others are alleged to have entered the house of late Sri Suraj Prasad armed with weapons and made an attempt on his life

7 First information report was lodged at police station Kasganj district Etah in that connection and Crime No 752 of 1977 was registered The case was committed to the Court of Session and is pending now as Sessions Trial No 261 of 1981 in the Court of Session

8 Narayan Prasad, opposite party No 2 could not file his report at the police station but applied to Superintendent of Police Etah His application was registered as Crime No 752A of 1977 Narayan Prasad alleged that incident occurred on 2 11 1977 at about 5 30 P M at his shop Suraj Prasad etc removed the sign board from his shop and attacked him while he was sitting at his shop and in that connection Marpit took place However the case was not sent up by police but had to be initiated on a complaint, under Ss 147/323 IPC The accused were summoned by learned Magistrate

9 On 30 5 1981 an application paper No 34/B was filed in the court of Magistrate by complainant that this case should be committed to the Court of Session as it was the cross case of the aforesaid Sessions trial Learned Magistrate observed that there was no evidence on record to show that it was the cross case of the version given by Suraj Prasad about which the aforesaid sessions trial was pending in the Sessions Court He further found that he did not think it expedient in the interest of justice also to commit the case to the Court of Session

10 After the rejection of this application the matter was carried up in Crl Revision No 32 of 1981 and the learned IXth Additional Sessions Judge Etah ordered on 7 8 1981 that the Magistrate should commit the case to the Court of Session

11 Against that order of Sessions Judge revisionist approached this Court in Criminal Revision No 1795 of 1981 when Hon ble Mr Justice V N Misra found that both versions related to separate incidents and under such circumstances, it was difficult to hold that these were cross reports in respect of the same occurrence However on 25 2 1983 learned Judge remanded the case to the Court of Session for disposal of the revision afresh after scrutinising the facts involved in the two cases and if he found that these were cross cases then only he could direct the learned Magistrate to commit the case to the Court of Session

12 It was after this remand order that Sri Sushil Kumar Gupta learned IInd Additional Sessions Judge Etah recorded the impugned order He opined that learned Magistrate had not properly gone through the facts of the case It was correct that the time and place of occurrence of both the incidents were different yet the matter appears to have sprung out of one incident

13 On behalf of revisionist it was argued that these observations of learned Sessions Judge were counter to the observations made by this Court who found that both the cases were totally different as was obvious from the time and venue of occurrence

14 It appears vide annexure-A to the revision, that F I R was lodged by Suraj Prasad Sharma on 2 11 1977 at 7 15 P M about the incident which occurred in the same evening at 6 30 P M Narayan Prasad and 11 others were nominated in that report as having entered his house when an attempt was made on the life of Harihar Sharma Narayan Panda, Param Naram and Ram Chandra were armed with knives and others were armed with sharp edged weapons They inflicted injuries on Harihar Sharma with various weapons Harihar Sharma sustained serious injuries in his chest and abdomen Bharat Chaturvedi etc intervened

15 In the complaint Narayan Prasad nominated Suraj Prasad Harihar Sharma Muran Ramesh and Hublal as accused under Ss 147/307/323/452 IPC This second complaint, resulted in the case pending before the Magistrate and was filed on 8 1 1979 The first complaint filed on 30-10-1978 had been dismissed in default

16 According to the version of this complaint, the occurrence took place on 2 11 1977 at 5 30 P M at the factory of Narayan Prasad. After scrutinising the evidence learned Magistrate found that only case under Ss 147/323 IPC was made out against the

accused He further found that the two incidents were distinct and separate and ther was no occasion to commit the case to the Court of Session

17 Obviously the rule as regards the cross cases to be tried by one court is only one of prudence to avoid different standards being applied in two cases arising out of same transaction It is not a rule of law Both the cases are separate and have to be decided on their own evidence on record vide Subhash Chandra v State reported in 1981 All LJ 458

18 The Magistrate was in a better position to have scrutinised the facts and evidence examined by him and gave good reasons to exercise his discretion It was open to him to commit the case to the Court of Session after scrutinising the evidence vide S 323 Cr P C In the impugned order the learned Sessions Judge did not give any cogent ground as to why he interfered with this discretion of Magistrate which was not improperly exercised Such discretionary orders of the trial court should not be lightly interfered with unless it appears that the Magistrate exercised his discretion arbitrarily by relying on irrelevant evidence or the orders suffered from some fundamental legal error like want of sanction etc Such fundamental error in principle was not committed by the Magistrate nor his order was without jurisdiction The case was within the jurisdiction of the Magistrate It was open to the accused in Sessions trial also to put forward counter version if both the incidents sprang out of the same occurrence according to the defence

19 In the result the impugned order is set aside and the order of Magistrate dated 30 5 1981 is restored Interim orders dated 27 11 1984 and 12 9 1985 are vacated herewith

20 Send the record of the case to the courts concerned at once for a quick disposal of the aforesaid sessions trial and criminal case

Revision allowed

1986 ALL L J 685

K P SINGH J

Riazuddin Petitioner v Dy Director (Consolidation) Ghazipur and another Respondents

Civil Misc Writ Petn No 6759 of 1972 D/ 12 2 1985

(A) Civil P C (5 of 1908), O 32, R 12 — Minor becoming major during pendency of proceeding — It is his discretion to appear before court — Non-appearance — Decision is binding on him

The perusal of the provision of O 32 would indicate that it is the discretion of the minor to appear before the court after becoming major to atone the proceedings or to repudiate the same If the minor petitioner does not appear in the proceeding after becoming major and his claim is decided in the proceeding he would be bound by the decision unless his guardian or next friend had not acted negligently or had not defrauded the minor 1982 All LJ 1463 Disting AIR 1979 All 242 Rel on (Para 8)

(B) U P Consolidation of Holdings Act (5 of 1954), S 5 — A executing sale deed of land which was described as Sirdari by Consolidation Officer and no Bhumidhari Sanad was on file to indicate that Bhumidhari had been obtained — Court yet recognizing claim of transferees based on sale deed without addressing itself that Sirdari Plots could not be sold — Held, judgment suffered from patent error of law (Para 9)

(C) Constitution of India, Art 226 — Writ petition — Practice and procedure — Specific paragraph of writ petition not controverted in counter-affidavit — Allegations therein to be assumed as correct (Para 10)

(D) U P Consolidation of Holdings Act (5 of 1954), S 5 — 'A' alleged to have executed several sale deeds regarding Sirdari Plots in favour of different persons, hence each sale deed was in respect of a part of the holding — Held, sale deeds were bad in law in the absence of permission u/s 5 and claim based on such sale deeds could not be allowed (Para 10)

GC/IC/D905/85/AAJ/MVJ H

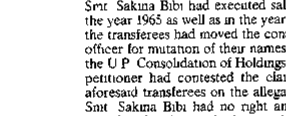
(E) U.P Consolidation of Holdings Act (5 of 1954), S 9 — A transferring her land to B — C claiming oral gift thereof to him by A raising objection that A having only right of enjoyment and not tenancy right transfer was not valid — Held, it was obligatory on C to contest claim during consolidation operation u/s 9 and that 'C' had no right to assail sale deed during A s lifetime (Para 11)

Cases Referred	Chronological	Paras
1982 All LJ 1463		8
1981 All LJ 781		12
1980 All LJ 580	AIR 1980 SC 1329	11 12
1979 All LJ 1077		11
AIR 1979 All 242		8

L P Nathani, for Petitioner S K Verma and Standing Counsel, for Respondents

ORDER — This writ petition arises out of proceedings initiated by the transferees of Smt Sakina Bibi for mutation of their names over the disputed plots It is noteworthy that Smt Sakina Bibi had executed sale deed in the year 1965 as well as in the year 1967 and the transferees had moved the consolidation officer for mutation of their names u/s 12 of the U P Consolidation of Holdings Act The petitioner had contested the claim of the aforesaid transferees on the allegations that Smt Sakina Bibi had no right and title to transfer the disputed plots and that the petitioner had claimed the disputed plots on the basis of oral gift as well as according to him he was the real tenure holder and Smt Sakina Bibi had only right of enjoyment of the disputed plots hence she could not transfer the disputed plots In this connection the petitioner has placed reliance upon the compromise contained in Annexure I attached with the writ petition

2 The relationship between the petitioner and Smt Sakina Bibi would be evident from the following pedigree —



3 The Consolidation Officer through his judgment dated 10-8-1971 (Annexure II) did not accept the claim of the transferees and ordered that the name of Smt. Sakina Bibi should remain recorded as usual He has also indicated that the petitioner had got no right in the disputed plots It appears that the transferees of the petitioner had preferred appeals and the appellate authority through its judgment dated 29 10 1971 rejected the claim of the transferees on the ground that they had not obtained requisite permission under Section 5 of the U P Consolidation of Holdings Act, hence their sale deeds were invalid in law and they could not get mutation In view of the aforesaid finding the appellate court did not categorically decide the claim of the petitioner Thereafter the transferees preferred revision petitions which have been allowed by the revisional court through its judgment dated 29 7 1972 contained in Annexure IV attached with the writ petition Aggrieved by the judgment of the revisional court the petitioner has approached this Court under Art 226 of the Constitution

4 The learned counsel for the petitioner has contended before me that the revisional court has patently erred in recognizing the claim of the transferees of Smt Sakina Bibi in the facts and circumstances of the present case According to him Smt Sakina Bibi had no tenancy right in the disputed plots and she could not transfer the same He has also emphasized that various sale deeds executed by Smt Sakina Bibi indicated that they were in respect of a part of her holding hence the sale deeds needed permission of the Settlement Officer of Consolidation u/s 5 of the U P Consolidation of Holdings Act and in the absence of requisite permission the revisional court has patently erred in recognizing the claim of the transferees

5 The learned counsel for the petitioner has emphasized before me that in view of the compromise (Annexure I attached with the writ petition) Smt Sakina Bibi had no tenancy right and during her lifetime or till the time she transferred the disputed plots the petitioner had no right to put forward his claim but due to transfer or surrender by Smt Sakina Bibi the petitioner got a right and in the circumstances of the present case his claim should have been accepted and in not doing so the consolidation authorities have patently erred in recognizing the claim of the transferees

6 The learned counsel for the contesting opposite party has submitted that the present

writ petition is not maintainable because the petitioner has become major and the petitioner has not appeared before this Court through any Counsel therefore the present writ petition has become infructuous and should be dismissed on this ground alone

7 Second submission made on behalf of the contesting opposite parties in the present case is that Smt Sakina Bibi executed sale deed in favour of the contesting opposite parties in the year 1965 and at that time she had only that much area which was sold In the year 1967 Smt Sakina Bibi got more area through a reference u/s 48(3) of the U P C H Act and she executed another sale deed of the area which she got later So in the facts and circumstances of the present case no question of obtaining permission u/s 5 of the U P C H Act arose and that the revisional court rightly accepted the claim of the transferees over the plots purchased by them

8 I have considered the contentions raised on behalf of the parties In my opinion the submission of the learned counsel for the opposite party that the writ petition should be dismissed because the petitioner after becoming major has not appeared before this Court through any counsel is without any force The perusal of the provision of O 32 would indicate that it is the discretion of the petitioner to appear before the court after becoming major to atone the proceedings or to repudiate the same If the minor petitioner does not appear in the proceeding after becoming major and his claim is decided in the proceeding he would be bound by the decision unless his guardian or next friend had not acted negligently or had not defrauded the minor In this connection my attention has been drawn to the ruling reported in 1982 All LJ 1463 No doubt the aforesaid ruling helps the learned counsel for the contesting opposite party in his contention but on facts it is distinguishable In the aforesaid ruling the learned Judge came to the conclusion that the minor after becoming major had repudiated by his conduct In the present case there is nothing to suggest that the petitioner has no intention to proceed with the writ petition The provisions of O 32 R 12 C P C and the ruling reported in AIR 1979 All 242 Hazari v Suresh lead me to infer that the submission of the learned counsel for the contesting opposite party in this regard is without any force

9 As regards second submission of the learned counsel for the contesting opposite parties it is sufficient to indicate that the revisional court has patently erred in accepting the claim of the contesting opposite party regarding the sale deed of the year 1967 The Consolidation Officer has indicated in his judgment dated 10 8 1971 that plots Nos 847 848 851 and 853 were Sirdari land and that no Bhumidhari Sanad was on the file to indicate that Bhumidhari had been obtained yet the revisional court has recognized the claim of the contesting opposite party without addressing itself that sirdari plots could not be sold I think that the impugned judgment suffers from patent error of law insofar as it has recognized the claim of the contesting opposite party based on the sale deed of the year 1967

10 As regards the claim of the contesting opposite party based on the sale deed dated 17 11 1965 it is noteworthy that in paragraph 25 of the writ petition it has been indicated that several sale deeds were executed in favour of different persons hence each sale deed was in respect of a part of the holding Therefore, the sale deeds were bad in law in the absence of permission under Section 5 of the U P Consolidation of Holdings Act Unfortunately the aforesaid paragraph of the writ petition has not been controverted in the counter affidavit Therefore the allegations in paragraph 25 of the writ petition are to be assumed as correct The perusal of the impugned judgment of the revisional court does not indicate that the revisional court has considered this aspect of the matter hence its judgment recognizing the claim of the contesting opposite parties on the basis of the sale deeds of the year 1965 appears to me erroneous in law

11 Regarding the contention of the learned counsel for the petitioner that Smt Sakina Bibi had no tenancy right in the disputed plots hence she could not transfer the same The perusal of Annexure I indicates that the disputed plots were allotted to Smt Sakina Bibi and she was also liable to pay rent to the Zamindar in respect of those plots and the aforesaid deed is dated 18 2 1952 I think that the petitioner's contention has no force If the petitioner was right in his contention, it was obligatory on his part to have contested the claim of Smt Sakina Bibi during the consolidation operation When the disputed plots were held as Bhumidhari or Sirdari of Smt Sakina Bibi, the petitioner does not get

any right to assail the sale deed executed by Smt Sakina Bibi during her lifetime The learned counsel for the petitioner invited my attention to the ruling reported in 1979 All LJ 1077 Zahoor Ahmad v Munfaat Ali and has contended that in the circumstances of the present case Smt. Sakina Bibi had only limited interest in the plots so she could not sell the plots In view of the ruling reported in 1980 All LJ 580 (AIR 1980 SC 1329) Bishwa Nath Pandey v Badami Kaur the ruling relied upon by the learned counsel for the petitioner is no longer good law The petitioner did not contest the claim of Smt. Sakina Bibi at proper stage i.e the proceedings under Section 9 of the U P Consolidation of Holdings Act, he cannot be permitted to assail the sale deed executed by Smt Sakina Bibi on the basis of the compromise contained in Annexure I attached with the writ petition

12 During the course of argument the learned counsel for the petitioner has also referred to the ruling reported in 1981 All LJ 781 Balbhadra v Board of Revenue The aforesaid ruling is based upon the terms of a will, hence it is not applicable to the facts and circumstances of the present case Through Annexure I attached with the writ petition the disputed plots did not vest in the petitioner Rather Smt Sakina Bibi was held entitled to the plots and she was made liable to pay rent to the Zamindar in respect of those plots, hence she became tenant of the disputed plots during her lifetime It is true that the disputed plots were given to her for possession and maintenance and it was agreed that on her death or surrender the plots would revert to the petitioner's father According to the then law Annexure I was executed which gave Smt Sakina Bibi limited right but during the consolidation operation at the stage of Sec 9 it was necessary for the petitioner to have asserted his right Moreover the terms contained in paragraph 2 of Annexure I indicate that Smt Sakina Bibi was entitled to the plots given to her and she was to remain in possession during her lifetime but would not claim tenancy right of Sheikh Ali Raza (her husband) As she was also held liable to pay rent with regard to the plots allotted to her it is to be seen in law whether she would acquire any tenancy right in the disputed plots or not It is also to be examined as to whether she acquired tenancy right under the provisions of U P Zamindari Abolition and Land Reforms Act in the disputed plots or not. In my opinion, she did acquire right in view of the ruling reported in 1980 All LJ 580 (AIR 1980 SC 1329)

13 During the lifetime of Smt Sakina Bibi the petitioner had no right and title to the disputed plots The petitioner had claimed the disputed plots on the basis of oral gift by Smt Sakina Bibi but he could not establish his claim before the consolidation officer hence his claim was rejected In appeal also he failed Thereafter he did not prefer a revision petition about his claim but when the revisional court decided the revision petitions in favour of the transferees of Smt Sakina Bibi the petitioner has approached this Court under Article 226 of the Constitution In my opinion when the petitioner did not press his claim before the revisional court he could not attack the judgment of the revisional court during the lifetime of Smt Sakina Bibi On this ground the petitioner has no legal and equitable claim to press in the present writ petition

14 Difficulty before me is that during the pendency of the writ petition Smt Sakina Bibi is dead and the sale deeds executed by her in favour of the contesting opposite parties are also not valid transactions The question arises whether any interference should be made with the impugned judgment at the instance of the petitioner In the circumstances of the present case the title of the Gaon Sabha would also emerge in the disputed plots due to invalid sale deeds executed by Smt Sakina Bibi The Gaon Sabha is not before this Court On the death of Smt Sakina Bibi the petitioner might claim the interest of Smt Sakina Bibi when the sale deeds executed by Smt Sakina Bibi in favour of the contesting opposite parties are not valid transactions To give relief to the persons entitled to the plots in suit disputed questions of fact will have to be gone into The contesting opposite parties (transferees of Smt. Sakina Bibi) can also claim the property on the basis of their possession for more than statutory period hence I do not consider it a fit case where interference should be made with the impugned judgment of the revisional court I have dealt with the submissions of the counsel for the parties above In fresh litigation between the parties or at the instance of Gaon Sabha regarding the disputed plots claims of the litigants will be decided strictly in accordance with law

15 In the result, the writ petition fails and is accordingly dismissed I make no order as to costs in the circumstances of the present case

Petition dismissed

1986 ALL L J 689

OM PRAKASH J

Hirday Narain Singh and another Petitioners
v Moloo Lal Srivastava Respondent

Civil Revn No 19 of 1985 D/ 20-11 1985 *

U.P Urban Buildings (Regulation of Letting, Rent, and Eviction) Act (13 of 1972), S 2(2) Expl I(a) — Words is reported to — Interpretation of — Suit for eviction — Benefit of Act — Entitlement for — Building though not ten years old, on date of suit, completing ten years during pendency of litigation — Provisions of Act are attracted "period of ten years" — Determination of

The premises which was not ten years old on the date of the suit and was exempted from the operation of the new Rent Act can be governed by it if ten years expired during the pendency of the litigation (Para 3)

Where the ground floor in respect of which the suit for eviction was filed was averred to have been completed in Jan 1975 by the owner and the period of ten years expired from the date of completion as averred during the pendency of the litigation and the tenants paid rent up to the date of notice of eviction they would be entitled to the protection of the Act and would not be liable to be evicted notwithstanding that the first assessment of the building was made in 1976 when the entire building was completed and the landlord failed to report the date of completion to the Municipal Board 1984 All LJ 102 (SC) Followed 1983 All LJ 733 and 1982 All LJ 376 (SC) Disting (Para 5)

A citizen who has constructed a building is supposed to report actual date of completion The actual date of completion which is known to and is averred by the plaintiff will not cease to be the date of completion simply because it was not reported to the local authority The dominant purpose of the Act 1972 is to protect the interest of the tenants and the whole Act is to be interpreted bearing this purpose in mind When the legislature intended to protect tenants then it will be preposterous to think that the legislature would give an overriding effect to the fiction to the detriment of the tenants (Para 4)

The words is reported to occurring in cl (a) of Explanation I to sub-sec (2) of S 2 deserves a liberal construction which is consistent to the object of the Act If the words is reported to are construed liberally then these words may be read meaning as is reported to or averred by the owner of a building So the date of assessment cannot be taken to be the date of completion if the date of completion is reported to or averred by the owner of a building precedes the date of assessment When the plaintiff himself averred that the portion under tenancy was constructed on an earlier date than the date of assessment, then there would be no justification to hold that the building was completed on a later date i e the date of assessment and thereby denying the protection to the tenant which is given by the Act 1972 (Para 4)

Cases Referred Chronological		Paras
1984 All LJ 102	AIR 1985 SC 817	3 5
1983 All LJ 733		4
1982 All LJ 376	AIR 1982 SC 1230 (2)	4

S N Singh and R N Singh for Petitioners
Rudreshwari Pd and Rajeshwari Pd for Respondent

ORDER — Raising a very interesting question this revision is filed by the tenant (revisionists) against the judgment and decree dt 5 1 1985 of the learned IV Additional District Judge Varanasi (briefly the A D J) arising from the suit filed by the landlord (respondent) for recovery of possession after ejectment of the tenants and for recovery of arrears of rent mesne profits and other charges Briefly the facts are that the plaintiff claimed that ground floor was completed in Jan 1975 and the first floor was completed in 1976 and thereafter the house-tax assessment was made The plaintiff had purchased the site of the present constructions with certain constructions vide sale deed dt 10-9 1974 (Ext 1) from Gokul, his son and his wife and then carried out constructions The ground floor was completed in Jan 1975 and the construction of the first floor was carried out

*Against judgment and decree of N K Mehrotra, 4th Addl, Dist Judge Varanasi, D/ 5 1 1985

AD/BD/A407/86/AAJ/SNV

in 1976 On 24-11 1980 the plaintiff gave a notice to the tenant having demanded arrears of rent from 1 2 1979 and having terminated their tenancy The suit was resisted by the defendants denying the contention of the plaintiff that the former were tenants only of the ground-floor They also averred that the portion under the tenancy is governed by the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 (for short the Act, 1972) It was contended that the rent for the period up to 31 8 1980 had been paid to the plaintiff This is how the defendants denied their liability of eviction The suit was first decided by the learned II Additional District Judge Varanasi vide order dt 25 8 1982 dismissing the suit with costs to the defendant No 1 who alone was found to be the tenant Then the plaintiff filed revision before this Court. All the findings of the lower court except the one that the Act 1972 applied to the portion under tenancy were confirmed by this Court vide order dt. 28 4 1983 and the case was sent back to record afresh finding as to whether the Act 1972 applied to the suit premises Then the suit was decided by the IV Addl. District Judge, Varanasi by the impugned order dt 5 1 1985 decreeing the suit of the plaintiff for ejectment of the defendant and for recovery of rent and other charges

2 Aggrieved by the said order of the learned A D J the defendants have filed the instant revision I have heard Sri S N Singh learned counsel for the defendants and Sri Rajeshwari Prasad, learned counsel for the plaintiff Approach of Sri Singh is very clear and simple What he urged is that before the trial court in the first round, the plaintiff categorically stated that the ground floor was constructed in 1975 and that the first floor became complete in 1976 He says that the trial court vide order 25 8 1982 clearly held that the plaintiff had let out only ground floor In the impugned order dt 5 1 1985 the learned A.D J clearly observed that all the findings of his learned predecessor except the findings on issue No 1 were confirmed in revision by this Court and the case was sent back for a fresh decision with a direction only to decide the following points —

1 When was the construction in question actually completed?

2 What is the date on which the first assessment relating to the building in question came into effect?

3 Whether in view of the first assessment made in relation to the building in question the date or the period when the building was actually completed is rendered immaterial?

4 Whether the U P Act 13 of 1972 is applicable to the building in question?

Then the learned A D J found that the Act of 1972 did not apply to the suit premises Ti e findings of his learned predecessor given in the first round on other issues having been confirmed, the learned A D J accepted the case of the plaintiff and decreed the suit for eviction of the defendants

3 The main question for consideration is whether the Act of 1972 applies to the suit premises The suit premises in this case is the ground floor As it was so found by the learned A.D J vide order dated 25 8 1982 and that finding was not disturbed by this Court in revision under the order dt 28 4 1983 The learned A D J vide order dt 25 8 1982 also found that the ground floor had been constructed in Jan 1975 This finding has also become final after the decision of this Court dt 28 4 1983 The argument of Sri Singh is that the finding that the defendants were tenants only of ground floor which was constructed in 1975 having become final the provisions of the Act, 1972 clearly attracted to the suit premises in view of rule laid down in the case of Vineet Kumar v Mangal Sain Wadhera, AIR 1985 SC 817 (1984 All LJ 102) that the premises which was not ten years old on the date of the suit and was exempted from the operation of the new Rent Act can be governed by it if ten years expired during the pendency of the litigation The Supreme Court was of the view that the moment a building becomes ten years old to be reckoned from the date of completion the Rent Act would become applicable The suit for eviction of the defendants was filed by the plaintiff against the defendants on 10 2 1981 and the period of ten years expired during the pendency of the instant revision which was filed on 11 1 1985 Litigation having remained pending even after the expiry of 10 years Sri Singh relying on the case of Vineet Kumar (supra) submits that the Act 1972 is applicable to the suit premises and the defendants are not liable to be evicted, as the finding of the trial court under the order dt. 25 8 1982 that no rent was due up to the date of notice has become final

4 On the other hand the submission of Sri Rajeshwari Prasad is that it is undisputed fact that the assessment of the building was made in the year 1976 when the entire building was completed relying on Explanation I to sub-sec (2) of S 2 of the Act 1972 Sri Rajeshwari Prasad argued that this is the case of building which is subject to the assessment and, therefore the date on which the first assessment thereof came into effect shall be deemed to be the date of completion of the building His argument is that no date of completion was reported by the plaintiff to the Municipal Board and therefore only the date of assessment made in respect of the building shall be taken to be the date of completion thereof It is argued that the court has to strictly see the language of the statute and if that is unambiguous then full effect be given to that without importing any foreign words in to it His precise argument is that cl (a) of Explanation I to sub-sec (2) of S 2 of the Act 1972 lays down the scheme as to which of the dates shall be deemed to be the date of completion and this provision makes clear that either it will be a date when the completion was reported to the local body by the owner of the building or the date which was recorded by the local authority having jurisdiction on its own enquiry and in the case of a building subject to assessment the date on which the first assessment thereof came into effect shall be deemed to be the date of completion of the building There being no date of report to or the date of record by the local authority Sri Rajeshwari Prasad urged that the building being the one which is subject to assessment only the date of assessment will be the date of completion in this case I do not feel persuaded by this argument made on behalf of the plaintiff The categorical case of the plaintiff before the trial court was that the ground floor which alone was held to be let out by the plaintiff was constructed in Jan 1975 The question is if no actual date of completion has been reported to the local authority but if the date of actual completion is known to and stated by the plaintiff then whether the court will decide the date of completion taking into account the actual date as averred by the plaintiff or by fiction as created by cl (a) of Explanation I to sub-sec (2) of S 2 The argument by Sri Singh is that when actual date of completion is stated by the plaintiff then the court will not give any consideration to the fiction and that the fiction will not override the reality The real fact as was stated by the plaintiff before the trial court is that the ground floor which is in dispute was constructed in Jan 1975 and in face of this explicit case Sri Singh argued that the date of assessment which was made in the year 1976 cannot be held to be the date of completion I find substance in the submission of Sri Singh The question is what is to be reported to by the owner of a building to the local authority? The answer is simple that a citizen who has constructed a building is supposed to report actual date of completion The actual date of completion which is known to and is averred by the plaintiff will not cease to be the date of completion simply because it was not reported to the local authority The dominant purpose of the Act, 1972 is to protect the interest of the tenants and the whole Act is to be interpreted bearing this purpose in mind When the legislature intended to protect tenants then it will be preposterous to think that the legislature would give an overriding effect to the fiction to the detriment of the tenants In the situation of a kind that has arisen in this case if the fiction is given an overriding effect over the actual date of completion as averred by the plaintiff then the tenants will be deprived of the protection which the legislature sought to give to them In my view the words is reported to occurring in cl (a) of Explanation I to sub-sec (2) of S 2 deserves a liberal construction which is consistent to the object of the Act If the words is reported to are construed liberally then in my view these words may be read meaning as is reported to or averred by the owner of a building The literal interpretation which is canvassed by Sri Rajeshwari Prasad of the words is reported to therefore cannot be accepted, because that is contrary to the object of the Act 1972 So the date of assessment cannot be taken to be the date of completion if the date of completion is reported to or averred by the owner of a building precedes the date of assessment When the plaintiff himself averred that the portion under tenancy was constructed on an earlier date than the date of assessment then there would be no justification to hold that the building was completed on a later date i e the date of assessment and thereby denying the protection to the tenant, which is given by the Act, 1972

There is no conflict in the date reported to or averred by the owner of a building because if at all the owner had reported the date he would have reported the date which he averred to be the date of completion

Reliance was placed for the plaintiff on Om Prakash Gupta. AIR 1982 SC 1230 (2) (1982 All LJ 376) The facts of this case are entirely different In para 4 the Supreme Court stated the facts thus —

The appellant sought the benefit of S 39 of the Act on the ground that if the date of occupation was taken to be the date of the completion of the shop then ten years having elapsed during the pendency of the revision before the High Court the Act would be applicable

From the facts as stated in said para 4 it is also clear that undisputed fact was that the first assessment of the shop took place on Ist April, 1968 Taking the date of assessmen s the date of completion within the meaning of Explanation I to sub-sec (2) of Sec 2 of the Act 1972 the contention of the appellant that he was entitled to the benefit of the Act 1972 was rejected So the question before the Supreme Court was whether the tenant could press the date of occupation to take the benefit of the Act, 1972 The date of occupation as it is manifest from cl (a) of Explanation I to sub-sec (2) of Sec 2 can be availed of only when there are no dates that is a date reported to or the date recorded by the local authority and the date of assessment When such neither date is available then only the date of completion shall be determined by resorting to the date of occupation As the date of assessment viz Ist April 1968 was available the Supreme Court took the view that the provisions of Explanation I to sub-sec (2) of Sec 2 were clear enough requiring no interpretation and the date of assessment being available the date of occupation could not be taken to be the date of completion So the facts of that case were entirely different from the facts of the case in hand So this case has been misplaced by learned counsel for the plaintiff Then for the plaintiff, his learned counsel alluded to the case of Deoki Nandan v IV Addl District Judge 1983 All LJ 733 The ratio of this decision also cannot be applied to the instant case on account of distinguishing facts In this case the admission made by the respondent No 2 when read as a whole indicated that the report about the completion of the shops in question had been made either in the month of May or June 1973 Learned single Judge before whom the case was observed that if the admission was to be ignored and the case was to be decided on the basis of other evidence produced by the parties then apparently it was a case where there was nothing on the record to indicate that any report about the completion of the shops in dispute had been made or otherwise recorded by the local authorities and in this view of the matter it is the date on which the first assessment in respect of the shops in question came into effect which would be the date on which the construction of the shops shall be deemed to have been completed Then the learned Judge added whether May or June 1973 when the report of completion of the construction is said to have been made is taken as the crucial date or 24-4 1973 when the first assessment was made is taken to be the crucial date the result is the same namely that in the year 1975 when the suit was instituted ten years had not expired from the date on which the construction of the shops shall be deemed to have been completed and therefore the provisions of the Act were not applicable to the shops So the factual position in the case of Deoki Nandan (supra) was entirely different and the said decision cannot be taken into aid to decide the case of the parties before me

5 The ground floor of the building having been completed in Jan 1975 according to the plaintiff himself and that having been in the tenancy of the revisionist the provisions of the Act 1972 clearly apply to the facts of the instant case in view of the decision of the Supreme Court in Vineet Kumar (1984 All LJ 102) (supra) as the period of ten years to be reckoned from Jan 1975 expired during the pendency of the litigation The defendants having paid rent up to the date of notice according to the trial court, I hold that they are entitled to the protection of the Act 1972 and they are not liable to be evicted

6 In the result, the revision succeeds and is allowed with costs and the judgment and decree D/ 5 1 1985 of the learned IV Additional District Judge are set aside

Revision allowed

1986 ALL L J 693

O P SAXENA J

Hashmuddin Appellant v Kishan Lal Narang and others Respondents

First Appeal No 235 of 1978 D/ 6 11 1985

(A) U P Ceiling on Property (Temporary Restrictions on Transfer) Act (36 of 1972), S 3(5) (as amended by U P Act 45 of 1972) — Agreement to sale immoveable property — Subsequently restriction imposed on transfer of such property viz to obtain permission from Commissioner — Sale deed executed without obtaining permission by the Vendor cannot be given effect to on ground that no restriction on transfer of property was there at the time of agreement of sale

An agreement to sell immoveable property was entered on 6 3 1972 Subsequently a restriction on transfer of such property was imposed by S 3 of U P Ceiling on Property (Temporary Restrictions on Transfer) Ordinance 1972 which came into force with effect from 11 7 1972 In view of S 3(5) the application for permission had to be given by the Vendor and not the Vendee A sale deed was executed by the Vendor without obtaining the permission of Commissioner as cotemplated by S 3(5)

Held that the sale deed could not be given effect to It could not be said that as there was no restriction on transfer of immoveable property at the time of the agreement to there could be no statutory duty on the part of Vendor to obtain the permission The imposition of restriction on transfer of immoveable property after the agreement did not make any difference It was the duty of the Vendor to obtain the required permission If there was any restriction at the time of the agreement itself it would be the duty of the Vendor to obtain such permission even if the restriction on transfer had been imposed after the agreement. The permission had to be obtained as the execution of the sale deed could be done only after the permission Further under the provisions of S 3(5) of U P Act No 36 of 1972 only the vendor could apply for permission Also there was no pleading by the Vendor that after the restrictions on the transfer of immoveable property were imposed, it was agreed between the parties that the Vendee would obtain the permission (Paras 34 44 to 46)

(B) Civil P C (5 of 1908), O 8, R 5(1) — Pleadings — Admission therein — Not conclusive

The admission in the pleadings is not conclusive It can be shown to be erroneous or untrue so long as the person to whom it was made had not acted to his detriment AIR 1956 SC 593 Rel on (Paras 52 53 57)

(C) Contract Act (9 of 1872), S 55 — Contract relating to sale of immovable property — Normal presumption is that time is not essence of contract.

The fixation of a period within which the contract has to be performed does not make the stipulation as to time the essence of the contract If the contract relates to the sale of immoveable property it will be normally presumed that time is not of the essence of the contract Whether such a condition exists in a particular case will depend on the intention of the parties and circumstances of the case Thus where the Vendee issued a notice to Vendor saying that he would obtain sale deed within 3 days of the permission required under certain Act for the transfer and impliedly sought extension of time it would not mean that the time was of the essence of contract (Case law discussed)

(Paras 60 61 64 65 70)

(D) Contract Act (9 of 1872), S 56 — Contract — Doctrine of frustration — Does not apply to self inducted frustration

The doctrine of frustration in respect of a contract does not apply to a self inducted frustration Thus where the Vendor who did not apply to the Commissioner for permission to immoveable property could not plead frustration of contract on ground of absence of permission for transfer AIR 1969 SC 110 Rel. on (Paras 74 75)

Cases Referred	Chronological Paras
AIR 1984 All 288	44 61 74
AIR 1978 All 446	61 68 69
AIR 1977 SC 1005	61
AIR 1971 SC 1756	73
AIR 1970 SC 546	43

AIR 1969 SC 110	74
AIR 1967 SC 868	61 62
AIR 1966 SC 773	39
AIR 1957 All 1 1957 All LJ 350 (FB)	54
AIR 1956 SC 593	53
AIR 1954 SC 44	72
AIR 1930 PC 287	42
AIR 1915 PC 83	60
1915 AC 386 84 LJ Ch 259 112 LT 664 Stickney v Keeble	62

N A. Kazmi, for Appellant

JUDGMENT — This is an appeal against the judgment and decree dated 17th May 1976 passed by the Additional Civil Judge Bulandshahr dismissing O S No 169 of 1973 (in) (Civil Judge s Court) for specific performance of an agreement of sale and decreeing the suit for recovery of Rs 6 000/ as earnest money with interest at 6% per annum. The parties were directed to bear their own costs

2 Dispute relates to house No 15 Qazi Bara, Bulandshahr and bounded as given in the foot of the plaint.

3 The Uttar Pradesh Ceiling on Property (Temporary Restrictions on Transfer) Ordinance 1972 came into force with effect from 11th July 1972 Sec 3 provided restrictions on transfer during a period of three months from the commencement of the Ordinance On 11th Sept. 1972 the Ordinance was replaced by U P Ceiling on Property (Temporary Restrictions on Transfer) Act 1972 U P Act 36 of 1972 U P Ceiling on Property (Temporary Restrictions on Transfer) Amendment Act 1972 U P Act 45 of 1972 came into force on 31st Dec 1972 The period was extended up to Jan 31 1973 The period was further extended and the restrictions continued even on 28th Feb 1973

4 Plaintiff filed the suit for specific performance of the agreement of sale dated 6 3 72 executed by defendant No 1 in his favour agreeing to transfer the disputed house for a sum of Rs 26 000/ out of which a sum of Rs 6 000/ was paid as earnest money The sale deed was to be executed by 28th Feb 1973 The plaintiff's case was that defendant No 1 told him that he would obtain permission from the Commissioner for executing sale deed but he did not do so On 17 2 1973 plaintiff sent a notice vide Ex A 4 to defendant No 1 who replied to the same vide reply dated 26-2 73 Ex 12 On 28 2 73 the plaintiff and defendant No 1 went to the office of Sub Registrar Bulandshahr and gave applications there On 5-4-73 defendant No 1 executed agreement of sale Ex B 8 in favour of defendants Nos 2 to 4 agreeing to transfer the property in their favour for a sum of Rs 25 000/ Defendant No 1 also gave possession over the house to the defendants Nos 2 to 4 This agreement is said to have been executed in continuation of an earlier agreement dated 17 1 72 vide copy Ex B 5 The plaintiff's case was that the agreement dated 17 1 72 was forged fictitious and ante dated It was said that defendants Nos 2 to 4 were very well aware of the earlier agreement of sale in favour of the plaintiff on 14-4-73 Plaintiff sent notices vide copies Ex 17 to all the defendants but some of them gave wrong replies The plaintiff claimed that he has been and is ready and willing to perform his part of the contract and defendant No 1 committed breach of the agreement when he did not obtain any permission from the Commissioner and did not execute any sale deed in favour of the plaintiff as agreed

5 The suit was contested by defendant No 1 with the allegations that the agreement dated 17 1 72 was duly executed by him in favour of defendants Nos 2 to 4 and one Allah Mehar that subsequently Allah Mehar came along with the plaintiff and told the defendant No 1 that the defendants did not want to get the sale deed executed in terms of the agreement dated 17 1 72 and he could execute an agreement of sale in favour of the plaintiff that believing Allah Mehar defendant No 1 executed the agreement of sale in favour of the plaintiff that defendant No 1 asked Allah Mehar to bring back the earlier agreement of sale and take Rs 500/ but the latter told him that the earlier agreement of sale was with the other defendants and he would bring it to him, and take back the money that defendant No 1 was ever ready and willing to execute the sale deed in favour of the plaintiff that the plaintiff was not ready and willing to get sale deed executed that he made various efforts to obtain forcible possession over the house that the plaintiff obtained a fictitious allotment order in his favour behind the back of defendant No 1 while he knew that defendant No 1 was

himself living in the house that on coming to know about the allotment order defendant No 1 moved an application before the Rent Control and Eviction Officer and the allotment order was cancelled that defendants Nos 2 to 4 protested to him as to why he executed the agreement of sale in favour of the plaintiff while the time to execute the sale deed in terms of the agreement of sale dated 17 1 72 had not expired, that plaintiff and Allah Mehar had deceived defendant No 1 when they told him that defendants Nos 2 to 4 did not want to purchase the property in pursuance of the agreement dated 17 1 72 that there was a quarrel between the plaintiff and defendants Nos 2 to 4 after the latter came to know about the agreement dated 6 3 72 in favour of the plaintiff that on 5-4-73 the defendant No 1 executed another agreement of the sale in favour of defendants 2 to 4 that the plaintiff had full knowledge of the agreement of sale dated 17 1 72 that he committed default in getting the sale deed executed in his favour on 28 2 73 in accordance with the terms of the agreement that the earnest money was forfeited and the plaintiff was not entitled to get back the same and that the suit for specific performance of the agreement of sale is liable to be dismissed

6 Defendants Nos. 2 to 4 contested the suit with the allegations that plaintiff was well aware of the agreement of sale dated 17 1 72 that a sum of Rs 500/ was paid as earnest money at the time of the agreement dated 17 1 72 and it was agreed that the sale deed would be executed by 15th July 1973 that a sum of Rs 19 500/ was paid as earnest money at the time of the agreement of sale dated 5-4 73 and the balance was agreed to be paid by 15th July 1973 by which date the sale deed was to be executed that on 5 4 73 defendants Nos 2 to 4 obtained possession over the house in part performance of the agreement of sale and they are entitled to the benefit of Sec 53 A of the Transfer of Property Act that there was collusion between the plaintiff and defendant No 1 and the latter executed the agreement dated 6 3 72 in favour of the plaintiff, that the said agreement is not binding on the defendants that the plaintiff is not entitled to get the specific performance of the agreement of sale on the basis of the same and that defendants Nos 2 to 4 are entitled to obtain a sale deed in pursuance of the agreement of sale dated 5-4 73

7 Plaintiff filed rejoinders to the written statement filed by the two sets of defendants

8 In the rejoinder filed to the written statement of defendant No 1 it was said that plaintiff never went to defendant No 1 along with Allah Mehar that the plaintiff had no knowledge of the agreement dated 17 1 72 that the said agreement has been fabricated and ante dated subsequently that the agreement dated 5-4-73 executed by defendant No 1 in favour of the plaintiff is fraudulent and collusive that permission could only have been obtained by defendant No 1 and the plaintiff could not obtain the permission as the title in the property vested in favour of defendant No 1 and that there is no question of forfeiting the earnest money

9 In the rejoinder filed to the written statement of defendants Nos 2 to 4 it was said that the agreement dated 5 4 73 was fraudulently executed in order to defeat the agreement in favour of the plaintiff that defendants Nos 2 to 4 and Allah Mehar are in collusion with each other that the agreement dated 6 3 72 executed by defendant No 1 in favour of the plaintiff is legally enforceable against the defendants Nos 2 to 4 as well and that the plaintiff is entitled to specific performance of the agreement of sale dated 6 3-72

10 On the application of the plaintiff Allah Mehar was brought on the record as defendant No 5

11 Defendant No 5 supported the case of defendants Nos 2 to 4 regarding the execution of the agreements of sale dated 17 1 72 and 5 4-73 but he did not admit playing any role in the execution of the agreement of sale dated 6-3 /2 in favour of the plaintiff

12 The Additional Civil Judge accepted the plaintiff's version regarding the due execution of the agreement of sale dated 6 3 72 executed by defendant No 1 in his favour He rejected the contention that this agreement was collusive and is not binding on the contesting defendants He did not accept the version of the contesting defendants regarding the due execution of the agreement of sale dated 17 1 72 and held that it was a fictitious document He however found that the plaintiff was not ready and willing to perform his part of the contract as he did not take

permission from the Commissioner for the execution of the sale deed He rejected the plea that time was essence of the contract In view of the findings he dismissed the suit for specific performance of the agreement of sale and granted a decree for refund of the earnest money He directed the parties to bear their own costs Hence this appeal.

13 Sri Murlidhar Advocate for the appellant challenged the findings that it was the duty of the appellant to have obtained the permission from the Commissioner and that as he failed to obtain the permission it should be deemed that he was not ready and willing to perform his part of the contract

14 Dr Gyan Prakash, Advocate appearing for the contesting respondents Nos 2 to 4 challenged findings that time was not the essence of the contract and that the agreement dated 17 1 72 was a fictitious document He also took the plea regarding the frustration of the contract

15 The first point for determination in this appeal is as to whether the agreement dated 17 1 72 was a fictitious forged and ante dated document

16 The original agreement is not on the record It was filed before the Rent Control and Eviction Officer Bulandshahr and the record was summoned to prove the document The agreement was scribed by none else than defendant No 1 on a stamp of Rs 2 50 purchased in the name of defendant No 5 Allah Mehar D W 3 Khurshid Alam was one of the marginal witnesses Defendant No 1 agreed to transfer the house in favour of defendants Nos 2 to 5 for a sum of Rs 25 000/ A sum of Rs 500/ was paid as earnest money The balance of the sale consideration was to be paid at the time of the execution of the sale deed The sale deed was to be executed by 15th July 1973 D W 1 Kishan Lal Narang D W 4 Mohd Hanif (D 2) and D W 3 Khurshid Alam are the three witnesses examined in this connection I shall refer to their evidence briefly before coming to the circumstances which would show that the agreement of sale dated 17 1 72 is a fictitious, forged and ante-dated document.

17 D W 1 Kishan Lal Narang stated that he scribed the agreement dated 17 1 72 after receiving Rs 500/ as earnest money at his house The agreement was scribed at 9 30 a m Besides him Mohd Hanif Habibul Rahman Dost Mohammad and Allah Mehar were present On the previous evening he and Mohammad Hanif had gone to the house of Basdeo petition writer and had got a draft prepared It was a Sunday and no stamp was available The talk of the agreement was taking place for the last three days On the day the agreement was scribed Allah Mehar brought the stamp He did not know from where the stamp was brought He has the draft ready with him and it was not necessary to go to any scribe He did not know if he had mentioned the boundary of the house about which the agreement was executed After this Allah Mehar came to him along with the plaintiff and told him that he did not want to purchase the house that plaintiff and defendant No 2 Mohammad Hanif are related and that he should enter into an agreement of sale with the plaintiff. He further told him that the other executants of the agreement of sale had gone out He insisted that as he was also one of the purchasers he should have no hesitation in accepting his words He executed the agreement of sale in favour of the plaintiff at the instance of Allah Mehar Allah Mehar was not present at the time the agreement dated 5 4-73 was executed At that time Mohammad Hanif Habibul Rahman and Dost Mohammad were present along with 7 or 8 persons whose names he did not know He was asked as to why it was not mentioned in the agreement dated 5-4-73 that Allah Mehar did not want to purchase the house in pursuance of the agreement dated 17 1 72 He replied that he did not get it mentioned as Allah Mehar had told him on 6-3-72 that he and other defendants did not want to purchase the house He was conscious that Allah Mehar had given wrong information in so far as other defendants were concerned He admitted that Allah Mehar had deceived him earlier He stated that he had no meeting with Mohammad Hanif and others till 28 2 73 even though these persons lived at Bulandshahr In para 5 of the written statement filed by him, it was said that he tried to contact defendants Nos 2 to 4 but they were not at Bulandshahr at that time and the contesting defendant could not contact them In his statement, he said that he did not consider it proper to meet defendants 2 to 4 He asked for the agreement of sale dated 17 1

72 from Allah Mehar and also agreed to refund the earnest money but the latter told him that he should not worry and he would return the agreement of sale and take back the money He met Allah Mehar after two months He met him 5 or 6 times and asked him for the return of agreement of sale dated 17 1 72 but the latter gave the same reply He went to Meerut on 21 3 73 to find out about the application for permission and he found that no application was given by the plaintiff He met defendants Nos 2 to 4 on the same day and told them about this He executed the agreement dated 5-4-73 in favour of defendants Nos 2 to 4 as he needed money and no permission had been obtained

18 D W 4 Mohd Hanif deposed regarding the two agreements of sale dated 17 1 72 and 5-4 73 The talk regarding the agreement dated 17 1 72 took place two days earlier On 15th Jan 1972 he went to see the house along with Allah Mehar On 16th Jan 1972 he and the other three defendants went to Kishan Lal Narang and had talks with him The talks finalised by about 8 or 9 p m The agreement dated 17 1 72 was executed at the house of Kishan Lal at about 9 a m On the previous evening he and Allah Mehar had gone to Basdeo petition writer for getting a draft prepared He did not remember if the draft was in Urdu or Hindi Other purchasers had not gone to the house of Basdeo He stated later that he and Allah Mehar had gone to the house of Basdeo at about 6 or 7 p m He had said earlier that the talks had finalised by about 8 or 9 p m He had got the draft prepared from Basdeo petition writer in order to save time He had to go to Hapur in connection with his timber business He purchases beams and takhtas from Hapur and brings the articles in a truck He did not go to Hapur for this purpose every day but he had to go once in a week or two weeks As he had to go to Hapur on 17th January he got the draft of the agreement prepared on the previous evening On 17th January he and Allah Mehar went to the house of Suresh Chandra Sharma and brought the stamp According to D W 1 Kishan Lal Narang only Allah Mehar had gone to bring the stamp The stamp was purchased in the name of Allah Mehar It was Allah Mehar who signed the register of the stamp vendor and not he He had no meeting with defendant No 1 between 17 1 72 and the allotment of the house in favour of the plaintiff The allotment was made on 15 3 73 Ex B 1 is the copy of the application dated 21 3 73 given by defendant No 1 for the cancellation of the allotment order Ex B-3 is the copy of the order dated 30 3 73 whereby the allotment order was cancelled in the presence of the allottee and the owner He later on said that he met Kishan Lal Narang 5 or 6 day prior to the agreement dated 5 4 73 He had no talk with him earlier but only Dua Salam used to take place No talk took place regarding the sale of the house Allah Mehar told him about a month prior to the execution of the agreement that he did not went to take the house but he did not tell him about the agreement in favour of the plaintiff He had no knowledge of the agreement of sale in favour of the plaintiff prior to 5 4 73 There was no quarrel between him and the plaintiff regarding the said agreement of sale In para 5 of the additional pleas of the written statement filed by defendant No 1 there was a reference to a quarrel between the plaintiff and defendants 2 to 4 when the latter came to know about the agreement of sale in favour of the plaintiff

18A D W 3 Khurshid Alam proved the execution of the agreement of sale dated 17 1 72 and his signature as a marginal witness He stated that the agreement of sale was executed at the house of Kishan Lal The agreement was scribed from a draft prepared earlier The witness was a partner of defendant No 2 Mohd Hanif in some business in 1974 75 He was Chairman of the Municipal Board and in 1968 he had given a lease of Municipal Board land to a brother of defendant No 2 He stated that the agreement was read over after it was executed When an agreement is scribed on the basis of a draft it is the draft which is read over earlier and finally approved before the agreement is scribed The talk of an agreement of sale did not take place in his presence He did not remember if the agreement was put down with a fountain pen or with a pen and ink He did not remember if a Bangladesh stamp was affixed at that time He denied that he became a witness of a fabricated document and came forward to make a false statement on account of his close relationship with defendant No 2

19 D W 2 Krishna Prasad was examined to corroborate the version of defendant No 1 that on 6 3 72 plaintiff and Allah Mehar came to him and told him that the defendant did not want to purchase the house and he could execute the agreement of sale in favour of the plaintiff He stated that Allah Mehar had told the defendant No 1 that the earlier agreement dated 17 1 72 was with Mohd. Hanif and he had gone out Allah Mehar had taken him to the house of Kishan Lal Narang as he was going there to persuade him for another agreement of sale The witness told Kishan Lal Narang that as Allah Mehar was not prepared to purchase the property he should give it to the plaintiff He did not remember the month or the season He did not remember if it was the beginning or the end of 1972 He knows English months. He is a teacher in a Municipal School He demed that he came forward to depose falsely even though he never accompanied to the place of Kishan Lal Narang

20 The Additional Civil Judge has rightly refused to place reliance on the statement of D W 2 Krishna Prasad and D W 3 Khurshid Alam There are discrepancies in the statements of D W 1 Kishan Lal Narang and D W 4 Mohd Hanif There are however circumstances which are very material—

Firstly the agreement dated 17 1 72 is said to have been scribed by defendant No 1 Kishan Lal Narang The agreements dated 6-3-72 and 5-4-73 were scribed in due course by the scribes There is much force in the contention that no professional scribe was ready to scribe a document in a back date and therefore the executant himself had scribed the agreement

Secondly the stamp of the agreement of sale was in the name of Allah Mehar Defendant No 2 Mohammad Hanif and defendant No 3 Habibul Rahman are real brothers Defendant No 4 Dost Mohammad is also close to them Defendants 2 to 4 had obviously 3/4th share in the house They wanted to purchase the house and had the stamp been purchased on 17 1 72 the same would have been purchased in the name of Mohd. Hanif who is said to have accompanied Allah Mehar for purchasing the stamp What is more probable is that at the time the agreement was fabricated no stamp of 17 1 72 could be available and Allah Mehar had a stamp of that date The stamp was therefore obtained from him and he was fraudulently joined as one of the prospective vendees

Thirdly in the agreement of sale dated 17 1 72 vide copy Ex B 5 it was specifically mentioned —

Moheeda Awwal Hai

In the normal course there is no recital of such a nature in the agreement of sale The recital was deliberately made because it was known that the agreement was bring forged fabricated and ante-dated

Fourthly the statement of D W 2 Mohd Hanif regarding getting the draft prepared from Basdeo petition writer earlier as he had to go to Hapur next day does not inspire confidence Had the agreement been executed in due course he could have postponed his visit to Hapur by a day and the agreement could have been executed in the Tahsil itself

Fifthly in the agreement of sale dated 6 3 72 vide Ex 1 no mention was made of the agreement of sale dated 17 1 72 or the representation made by Allah Mehar who is said to have gone along with the plaintiff and told defendant No 1 that the prospective vendees of the agreement of sale dated 17 1 72 did not want to purchase the property There is no reason why defendant No 1 should not have contacted the contesting defendants 2 to 4 according to para 5 of the additional pleas of the written statement filed by defendant No 1 he could not contact the defendants 2 to 4 as they were not at Bulandshahr The statements of D W 1 Kishan Lal Narang and D W 4 Mohd Hanif, however show that defendants Nos 2 to 4 were very much at Bulandshahr The entire story about the representation made by Allah Mehar to defendant No 1 is a cock and bull story No reasonable person could have acted on the representation made by Allah Mehar without any reference to defendants Nos 2 to 4 It was not mentioned in the agreement dated 6 3 72 that it was the second agreement

Sixthly had Allah Mehar made any representation to defendant No 1 he would have returned the original agreement of sale but he did not do so on the ground that it was

with defendants 2 to 4 As a reasonable and prudent person defendant No 1 could not have accepted the assurance of Allah Mehar that he would return the agreement soon thereafter and he should have contacted defendants Nos 2 to 4 who were in possession of the agreement Had there been any such genuine agreement he would have certainly done so

Seventhly the sum of Rs 500/ was not refunded to the prospective vendees of the agreement of sale dated 17 1 72 on 6 3 72 or on any date subsequent thereto Ex B 9 is a receipt given by Allah Mehar on 19 3 73 on receipt of Rs 125/ from defendants Nos 2 to 4 This receipt also appears to be a fictitious document

Eighthly no mention was made in the agreement of sale dated 5-4 73 Ex B-8 that this agreement was being executed in supersession of the agreement dated 17 1 72 as Allah Mehar was no longer interested in purchasing the house The earlier agreement of sale was only referred at the end of the agreement for adjusting Rs 500/ as earnest money given at that time

Ninthly even though defendant No 5 Allah Mehar supported the case of defendant No 1 he did not support the version of defendant No 1 regarding the role played by him in the execution of the agreement of sale in favour of the plaintiff He was a material witness The Additional Civil Judge has rightly criticised his non production Had he come in the witness box it could have been known as to whether he ever wanted to purchase the house along with other defendants or why he gave up his intention to purchase the house The entire story regarding Allah Mehar at any point of time being a prospective vendee is a concocted one

Lastly defendant No 1 and defendant No 2 met several times after the agreement of sale dated 17 1 72 Defendant No 2 must have known that there was a restriction on the transfer of property and permission had to be obtained from the Commissioner There is no evidence to show that at any time defendants Nos 2 to 4 asked defendant No 1 either orally or in writing to obtain the permission from the Commissioner in pursuance of the agreement dated 17 1 72 Had there been any genuine agreement they would have done so

21 31 For the reasons given above I hold that the agreement of sale dated 17 1 72 was a forged fabricated and ante-dated document

32 The second point for determination in this appeal is as to whether the plaintiff or defendant No 1 had to obtain permission from the Commissioner as provided in Sec 3(5) of U P Act No 36 of 1972 as amended by U P Act No 45 of 1972 which came into force on 31st Dec 1972

33 Sec 3(5) of U P Act 36 of 1972 provided as below —

Notwithstanding anything in this section the Commissioner of the Division on being satisfied that the present market value of urban property held by any person along with members of his family on April 1 1969 as well as on the date of commencement of this Act does not exceed two lakhs of rupees may permit him to transfer the whole or part of such property

Explanation— In this sub-section family in relation to a person means his or her spouse and minor sons and daughters (other than married daughters)

34 A perusal of the provision shows that application for permission had to be given by the vendor and not by the vendee

35 In para 4 of the plaint it was alleged that defendant No 1 told the plaintiff that he would try to get the permission to execute a sale deed from the Commissioner but he did not do so

36 In para 4 of the written statement filed by defendant No 1 para 4 of the plaint was not admitted

37 In the additional pleas raised by defendant No 1 it was not specifically alleged that plaintiff had told him that he would obtain the permission from the Commissioner

38 Order 8 Rule 5(1) C P C provides —

Every allegation of fact in the plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleading of defendant, shall be taken to be admitted except as against a person under disability

Provided that the Court may in its discretion equire any fact so admitted to be proved otherwise than by such admission

39 In Dr Jagit Singh v Giani Kartar Singh, AIR 1966 SC 773 it was held that it is open to the Court to exercise its discretion and require a party to prove a fact even though an admission of the said fact by the opponent can be inferred by the strict application of O 8 R 5 C P C No such order was passed by the Court

40 In view of the provisions of O 8 R 5(1) C.P C the allegation made by the plaintiff in para 4 of the plaint shall be taken to be admitted against defendant No 1 who was not suffering from any disability

41 Sri Murlidhar placed reliance on certain cases in support of his contention that if a permission had to be obtained before execution of the sale deed, it was the duty of defendant No 1 to have obtained the same

42 In Motu Lal v Nanhe Lal AIR 1930 PC 287 it was held that in an agreement of sale there is an implied covenant on the part of the vender to do all things necessary to effect the transfer This would include an application under Sec 59(1) of the Central Provinces Tenancy Act 1920 to the Revenue Officer to sanction the transfer

43 In Nathulal v Phool Chand, AIR 1970 SC 546 it was held that where by a statute a property is not transferable without the permission of the authority an agreement to transfer the property must be deemed to be subject to the implied condition that the transferor will obtain the sanction of the authority concerned

44 In Ved Prakash v Shishupal Singh AIR 1984 All 288 this Court considered the provisions of U P Act 36 of 1972 It was held that the responsibility for obtaining the permission was on the vendor

45 Dr Gyan Prakash submitted that there was no restriction on transfer of property at the time of agreement dated 6 3 72 The restriction was imposed on 11th July 1972 As there was no restriction on transfer of immoveable property at the time of the agreement, there could be no statutory duty on the part of defendant No 1 to obtain the permission The parties could agree that permission would be obtained by the vendee

46 I am unable to accept the contention of Dr Gyan Prakash that the imposition of restriction on transfer of immoveable property after the agreement made any difference It was the duty of the vendor to obtain the required permission If there was any restriction at the time of the agreement itself it would be the duty of the vendor to obtain such permission even if the restriction on transfer had been imposed after the agreement Firstly the permission had to be obtained as the execution of the sale deed could be done only after the permission Secondly under the provisions of Sec 3(5) of U P Act No 36 of 1972 only the vendor could apply for permission Thirdly there was no pleading by defendant No 1 that after the restrictions on the transfer of immoveable property were imposed it was agreed between the parties that the plaintiff would obtain the permission

47 P W 1 Hashmuddin stated that after the agreement the restrictions on transfer were imposed, that he had talk with defendant No 1 and that he told him that he would obtain the permission He further stated that defendant No 1 did not actually obtain any permission and the sale deed could not be executed before 28 2 73 In his cross examination he stated that he had talks with defendant No 1 regarding the permission that defendant No 1 kept on putting off the matter and that he used to tell him that he would go to Meerut on such and such date or such and such date that he did not give any written notice to defendant No 1 and that defendant No 1 never told him that he had given any application to the Commissioner Meerut Division

48 D W 1 Kishan Lal Narang stated that after the restrictions were imposed he told the plaintiff that permission had to be obtained, that the plaintiff told him that he should not bother that the plaintiff obtained his signature on a Vakalatnama and a form of application for being moved before the Commissioner Meerut Division and that he told him that he would go to Meerut for this purpose In his cross-examination he stated that the plaintiff obtained his signatures on 15 12 72 when none else was present He admitted that he made no mention of these facts in the written statement After 28 2 73 he went to Meerut

and found out that no application had been given He had gone to Meerut on 21 3 73

49 The plaintiff gave an application for temporary injunction on 31st May 1973 He filed an affidavit in support of the application Annexure A (Paper No 9 ga) is the copy of an application dated 12 4-73 given by defendant No 1 to the Commissioner Meerut Division for the requisite permission Had defendant No 1 been keen to honour the agreement of sale with the plaintiff he could have given such an application before 28 2 73

50 Dr Gyan Prakash placed reliance on Ex A-4 copy of the plaintiff's notice dated 17 2 73 It was decided (recited?) —

Bainama 28 2 73 E tak tahrir hona tha magar hukm sarkar se bainamon ka tahrir hona rok diya gaya hai jiski babat ijazat commissioner saheb hasil ki ja rahi hai Bainama khulne par ya ijazat commissioner milne par jo bhi waqya pahle ho jayega uske andar tin din ke bainama kara lenge

51 I am unable to accept the contention of Dr Gyan Prakash that the words jiski babat ijazat Commissioner Saheb hasil ki ja rahi hai mean that it was agreed between the parties that the plaintiff would obtain the permission or that plaintiff meant by these words that he had given application for permission I have referred to the statement of P W 1 Hashmuddin which shows that defendant No 1 had told him that he would obtain the permission and every time he used to tell him that he would move the application for permission on such and such date or such and such date The plaintiff could very well assume that defendant No 1 was taking the necessary steps for permission on the basis of the assurances given by him By no stretch of imagination an inference can be drawn that the plaintiff has taken steps for obtaining the permission from the commissioner

52 Even if the contention of Dr Gyan Prakash is correct and the said recital in the notice amounts to an admission the record shows that the admission was erroneous

53 In Nagubai v B Shama Rao AIR 1956 SC 593 it was held that admission is not conclusive It can be shown to be erroneous or untrue so long as the person to whom it was made had not acted to his detriment

54 In A P Bhargava v B S Bhargava 1957 All LJ 350 (AIR 1957 All 1) (FB) it was held that the effect of a previous admission can be removed by proving facts which go to show that the admission was erroneous

55 Before referring to the facts which go to show that the admission was erroneous I may make a note of the statement of D W 1 Kishan Lal Narang that the plaintiff obtained his signature on a Vakalatnama and a form of application on 25 12 72 A perusal of U P Act 36 of 1972 would show that there was no provision for such a permission when the Act came into force on 11th Sept 1972 This provision was introduced for the first time by U P Act No 45 of 1972 which amended U P Act No 36 of 1972 and introduced sub-clause (5) in Sec 3 with effect from 31 12 72 There could be no question of the plaintiff having gone to defendant No 1 on 25 12 72 with a form of application or Vakalatnama for his signature The statement of D W 1 Kishan Lal Narang on this point is totally false

56 The relevant facts which go to show that the alleged admission was erroneous are —

(1) Defendant No 1 did not specifically refute the plaintiff's allegation that he had promised to obtain the permission

(2) Defendant No 1 did not specifically allege in the written statement that the plaintiff had agreed to obtain the permission from the Commissioner Meerut Division

(3) Under Sec 3(5) of U P Act 36 of 1972 the permission could be obtained by defendant No 1 and not by the plaintiff

(4) There is no reliable evidence to show that the plaintiff ever obtained the signature of defendant No 1 on any application or Vakalatnama

(5) The statement of D W 1 Kishan Lal Narang shows that when he went to Meerut on 21 3-73 he found that no application for permission had been given

(6) The application for permission was actually given by defendant No 1 on 12 4 73 vide Annexure A referred to above

57 I therefore hold that the plaintiff's version is correct that defendant No 1 had agreed to obtain the permission that the recital referred to in the notice Ex A 4 does not

amount to an admission that the plaintiff had moved an application for permission before the Commissioner Meerut Division that the aforesaid recital was based on the assurances given by defendant No 1 and that even if it was an admission as alleged, it has been proved to be erroneous

58 The third point for determination in this appeal is as to whether time was of the essence of the contract

59 The agreement of sale dated 6 3 72 provided that the sale deed would be executed by 28 2 73

Section 55 of the Contract Act provides —

When a party to a contract promises to do a certain thing at or before a specified time or certain things at or before specified times and fails to do any such thing at or before the specified time the contract or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract

60 The fixation of a period within which the contract has to be performed does not make the stipulation as to time the essence of the contract See Jamshed Kodaram Irani v Burjorji Dhunjibhai AIR 1915 PC 83

61 If the contract relates to the sale of immovable property it will be normally presumed that time is not of the essence of the contract Sri Murlidhar relied upon Gomathinayagam Pillai v Palaniswami Nader AIR 1967 SC 868 Govind Prasad Chaturvedi v Hari Dutt Shastri, AIR 1977 SC 1005 Govind Lal v C K Sharma AIR 1978 All 446 and Ved Prakash v Shishupal Singh AIR 1984 All 288

62 Dr Gyan Prakash placed reliance on the following observations made in Gomathinayagam Pillai v Palaniswami Nader (AIR 1967 SC 868) (supra) at p 871 —

Intention to make time of the essence if expressed in writing must be in language which is unmistakable it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period if having regard to the express stipulations of the parties nature of the property and the surrounding circumstances it is not inequitable to grant the relief If the contract relates to sale of immovable property it would normally be presumed that time was not of the essence of the contract Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence

On p 872 the Supreme Court observed —

It is true that even if time was not originally of the essence the appellants could by notice served upon the respondent call upon him to take the conveyance within the time fixed and intimate that in default of compliance with the requisition the contract will be treated as cancelled As observed in Stickney v Keeble 1915 AC 386 where in a contract for the sale of land the time fixed for completion is not made of the essence of the contract but the vendor has been guilty of unnecessary delay the purchaser may serve upon the vendor a notice limiting a time at the expiration of which he will treat the contract as at an end In the present case appellants 1 and 2 have served no such notice by their letter dated July 30 1959 they treated the contract as at an end If the respondent was otherwise qualified to obtain a decree for specific performance his right could not be determined by the letter of appellants 1 and 2

63 Dr Gyan Prakash referred to the reply notice dated 26 2 73 Ex A 3/Ex 12 sent by defendant No 1 to plaintiff It was said that plaintiff was told a number of times to obtain permission of the Commissioner that the plaintiff replied that permission would be received shortly that he was told plainly that he should positively obtain permission before 28 2 73 and obtain the sale deed after which defendant No 1 would not be liable to execute the sale deed that it was none of the concern of defendant No 1 as to whether plaintiff obtained permission or not that defendant No 1 was ready to execute sale deed by 28 2 73 and that thereafter plaintiff would not be entitled to obtain the sale deed from him It was submitted that defendant No 1 was entitled to make time the essence of the contract by correspondence and he did so by sending the reply notice

64 The legal position is that in an agreement of sale of immovable property there is a presumption that time is not of the essence of the contract Whether such a condition exists in a particular case will depend on the intention of the parties and circumstances of the case

65 The plaintiff's notice dated 17 2 73 vide Ex A-4 saying that he would obtain sale deed within 3 days of the permission and impliedly seeking extension of time does not mean that time was of the essence of contract

66 Apart from reply notice dated 26 2 73 there is no oral or documentary evidence to show that either party intended that time should be of the essence of the contract This fact was not specifically pleaded in the written statement filed by defendant No 1 In para 8 of the additional pleas in the written statement filed by defendant No 1 all that was said was that the sale deed in favour of plaintiff was to be executed by 28 2 73 No issue was pressed on the plea D W 1 Kishan Lal Narang did not say so in his deposition before the Court below After the agreement of sale restrictions on transfers were imposed

67 The provisions of S 3(5) of U P Act No 36 of 1972 show that defendant No 1 the vendor alone and not the plaintiff the vendee could obtain permission

68 In Govind Lal v C K Sharma, AIR 1978 All 446 condition No 3 of the agreement of sale provided that mortgage deed in favour of G Alphanzo was to be cleared and paid by the vendors before the execution of sale deed The sale deed was to be executed in 6 months It was held that in such a case time could not be of the essence of the contract

69 In the present case permission had to be obtained by defendant No 1 before executing the sale deed This was a condition precedent to the execution of sale deed How could defendant No 1 take the stand that it was no concern of his as to whether a permission was obtained or not? The decision in Govind Lal v C K Sharma (supra) is applicable and time could not be of the essence of the contract

70 The Additional Civil Judge has rightly held that time was not of the essence of the contract and I decide the point in the negative

71 The fourth point for determination in this appeal is as to whether the doctrine of frustration is applicable

Sec 56 of the Contract Act provides —

An agreement to do an act impossible in itself is void.

A contract to do an act which after the contract is made becomes impossible or by reason of some event which the promisor could not prevent unlawful becomes void when the act becomes impossible or unlawful

Where one person has promised to do something which he knew or with reasonable diligence might have known and which the promisee did not know to be impossible or unlawful such promisor must make compensation to such promisee for any loss which such promisee sustains through the non performance of the promise

72 In Satyabrata Ghose v Mugneeram Bengur and Co AIR 1954 SC 44 it was held that doctrine of frustration is really an aspect or part of the law of the discharge of the contract by reason by supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Sec 56 of the Contract Act

73 In Sushila Devi v Hari Singh AIR 1971 SC 1756 it was held on p 1759 —

The impossibility contemplated by S 56 of the Contract Act is not confined to something which is not humanly possible If the performance of a contract becomes impracticable or useless having regard to the object and purpose the parties had in view then it must be held that the performance of the contract has become impossible But the supervening events should take away the basis of the contract and it should be of such a character that it strikes at the root of the contract

74 In Ved Prakash v Shishupal Singh AIR 1984 All 288 this Court considered the effect of the restrictions imposed on the transfer of property by U P Act No 36 of 1972 It was held that it was the duty of defendant appellant to obtain permission for

transfer There was no absolute bar on transfer Relying on Boothalinga Agencies v V T C Poriaswami Nadar AIR 1969 SC 110 it was held that the doctrine of frustration does not apply to a self induced frustration

75 In this case also the position was similar Defendant No 1 did not apply before the Commissioner prior to 28 2 73 for permission to sell The doctrine of frustration could not be pleaded for his own inaction I decide the point in the negative

76 The fifth point for determination in this appeal is as to whether the plaintiff is entitled to specific performance of the agreement of sale

77 The recitals in the plaint and the statement of P W 1 Hashmuddin clearly show that the plaintiff was and had been ever willing and ready to perform his part of the contract He went to the office of the Sub-Registrar on 28 2 73 Ex 3 is the copy of the application given by him before the Sub-Registrar between 2 P M and 3 P M Ex A 2 is the copy of the application given by defendant No 1 during the same period Ex A 1 is the copy of the application given by defendant No 1 between 3 P M and 4 P M Ex 2 is the copy of the application given by the plaintiff between 3 P M and 4 P M In the application Ex 3 given by the plaintiff it was clearly mentioned that he had come prepared with the balance of the sale consideration In the application Ex 2 it was also mentioned that in case the execution of the sale deed and its registration was possible he was prepared to get the sale deed executed and registered P W 1 Hashmuddin stated that Kishan Lal Narang asked him to obtain the sale deed without permission and he replied that in case it was permissible he was willing Both the plaintiff and defendant No 1 had given two applications each between the same time i e between 2 P M and 3 P M and between 3 P M and 4 P M on 28 2 73 It is not possible to believe the statement of D W 1 Kishan Lal Narang that he did not meet the plaintiff on 28 2 73 Defendant No 1 is an unscrupulous person After the agreement in favour of the plaintiff he began negotiating with other persons The notice Ex A 4 dated 17 2 73 was given by the plaintiff to Saghir Mohammad and also Bashir Mohammad besides defendant No 1 Kishan Lal Narang It was mentioned that plaintiff had come to know that defendant No 1 did not want to execute the sale deed in his favour and he wanted to execute the sale deed in favour of the other two persons Defendant No 1 actually entered into an agreement of sale with defendants Nos 2 to 4 on 5 4-73 He also applied for permission to the Commissioner Meerut Division on 12 4-73 He set up a fictitious forged and ante dated agreement of sale dated 17 1 72 to support the case of defendant No 1 I am unable to accept his version that the plaintiff was not ready and willing to perform his part of the contract as he had no ready money I hold that the plaintiff was ever ready and willing to perform his part of the contract

78 In view of my findings above I am of the opinion that the Additional Civil Judge erred in refusing the decree for specific performance of the agreement of sale and in passing the decree only for the refund of the earnest money

79 The appeal is allowed and the judgment and decree passed by the court below are set aside The suit for specific performance of the agreement of sale dated 6-3 72 executed by defendant No 1 in favour of the plaintiff is decreed The plaintiff is directed to deposit Rs 19 000/ and expenses for stamp and registration in the court below within a month Defendant No 1 is directed to execute the sale deed in favour of the plaintiff within a week thereafter The expenses for stamp and registration will be borne by the plaintiff Defendants 1 to 4 are further directed to deliver possession over the house to the plaintiff within the same period In case of default the plaintiff would be entitled to get the sale deed executed by the Court and also obtain possession over the house through the Court The plaintiff will get the costs of both the Courts from defendants Nos 2 to 4

Appeal allowed

1986 ALL L J 705

N D OJHA AND R K SHUKLA JJ

Sadhu Ram Agarwal Applicant v Smt Shanti Sharma Opposite Party

Civil Revn No 367 of 1982 and Writ Petn No 9499 of 1983 D/ 19 11 1985 *

(A) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), Ss 2(2), 39, 40 — Expression date of commencement of the Act" used in Ss. 39/40 — Interpretation of — It means date on which provisions of Act became applicable to building in respect of which suit for ejectment was pending — Definition of word "commencement" in S 4(10) of U.P General Clauses Act cannot be applied for interpreting the word with reference to Ss. 39/40 — (U P General Clauses Act (1 of 1904), S 4(10)

Provisions of Ss 39 and 40 are in the nature of a beneficent piece of legislation and are intended to save a tenant from ejectment if he complied with the requirements of these sections If the words on the date of commencement of this Act used in Ss 39 and 40 are interpreted to mean 15th July 1972 the protection granted by these sections would not be available to such tenants There seems to be no good ground to take the view that the Legislature intended to create such a discrimination The subject or context of Ss 39 and 40 therefore require that the definition of the word commencement contained in S 4(10) of the U P General Clauses Act should not be applied for interpreting that word with reference to Ss 39 and 40 aforesaid The words the date of commencement of the Act used in Ss 39/40 mean the date on which the provisions of the said Act became applicable to the building in respect of which the suit for ejectment was pending In other words if the provisions of the Act had already become applicable to the building on 15th July 1972 it will be that date which will be treated to be the date of commencement of this Act In respect of other buildings to which the provisions of the Act became applicable after 15th July 1972 the date of commencement of this Act would be the date on which that building becomes subject to the provisions of the Act within the meaning of S 2(2) thereof 1984 All LJ 102 (SC) Followed (Paras 5 6)

(B) Precedents — Binding nature of — Certain arguments not appearing to have been made before Supreme Court whose decision was relied on — Point with reference to which argument was subsequently advanced actually decided — Decision is binding AIR 1963 SC 151 Rel on (Constitution of India, Art 141) (Para 3)

Cases Referred	Chronological	Paras
1984 All LJ 102	AIR 1985 SC 817	2 3
1982 All LJ 376	AIR 1982 SC 1230 (2)	1 2
1975 All LJ 1	1975 All WC 138	1
AIR 1963 SC 151		3

Rajesh Tandon for Applicant I N Misra and V S Saxena for Opposite Party

ORDER — In these two cases the following question has been referred to us for answer —

Whether the words the date of the commencement of this Act used in S 39/40 of U P Act 13 of 1972 mean July 15 1972 or can they be equated with the date on which a particular building becomes subject to the provisions of the Act within the meaning of S 2(2) thereof"

A similar question with reference to S 39 of the aforesaid Act namely U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 (U P Act XIII of 1972) came up for consideration before a Division Bench of this Court in R D Ram Nath & Co v Girdhari Lal 1975 All LJ 1 It was held in that case that the words commencement of this Act in S 39 must therefore mean the date on which the provisions of the Act became applicable to the building in respect of which the suit for ejectment was pending It was also pointed out in the said decision that by virtue of S 40 of the Act aforesaid the provisions of S 39 in regard to a suit would apply mutatis mutandis to pending appeals or revisions In other words the meaning which was to be given to the words commencement of this Act in S 39 was to be given to the same words used in S 40 also The learned single Judge who made the reference was of the view that on account of the subsequent

*Against order of D L Agarwala Dist Judge Dehradun D/ 28 5 1982

AD/DD/A410/86/VAN/MVJ

decision of the Supreme Court in Om Prakash Gupta v Dig Vijendrapal Gupta AIR 1982 SC 1230 (2) (1982 All LJ 376) which appeared to take a contrary view the question deserved to be decided by a larger Bench

2 Having heard counsel for the parties we are of opinion that in view of a latter decision of the Supreme Court in Vineet Kumar v Mangal Sain AIR 1985 SC 817 (1984 All LJ 102) the question referred to us stands already decided and the answer to the question referred to us has to be in conformity with the decision of the Supreme Court in the case of Vineet Kumar (supra) In that case according to the finding of the Additional District Judge the Building in question was to be deemed to have been completed on the date of assessment of the house which date was 1st of Oct 1971 as stated in para 12 of the report The suit was filed on the allegation that the building was constructed in 1971 and the defendant was inducted as a tenant thereof on 7th Feb 1972 It was further stated in the plaint that the tenant had defaulted in the payment of rent despite notice dated 24th March 1977 as a result of which his tenancy was terminated and suit for his ejectment was filed Apparently therefore the suit for ejectment was instituted in that case on some date after 24th March 1977 which was the date of service of notice and was thus not pending on 15th July 1972 which is the date of commencement of U P Act XIII of 1972 according to the notification issued under S 1(4) of the said Act During the pendency of either the suit or the revision under S 25 of the Provincial Small Cause Courts Act ten years from the date on which the building was deemed to have been completed expired and the question arose as to whether the tenant was entitled to the benefit of Ss 39 and 40 of the Act. It was held by the Supreme Court even after noticing its earlier decision in the case of Om Prakash Gupta (1982 All LJ 376) (supra) in para 17 of the report that the appellant was entitled to the benefit of those sections Even though it has not been specifically stated in the said decision that the words "the date of commencement of this Act" used in S 39/40 were not confined to July 15 1972 but were to be equated to the date on which the particular building becomes subject to the provisions of the Act within the meaning of S 2(2) thereof the decision in substance is to that effect It is precisely this question as already seen above which is referred to us

3 In this connection however it was pointed out by counsel for the respondent that sub-section (4) of S 1 of U P Act XIII of 1972 provides that the Act shall come into force on such date as the State Government may by notification in the Gazette appoint and that by a notification issued under the said provision 15th July 1972 was fixed as the date on which the Act was to come into force On its basis and on the basis of the definition of the term commencement contained in S 4(10) of the U P General Clauses Act which contemplates that commencement used with reference to an Act shall mean the date on which the Act comes into force it was urged by counsel for the respondent that the words the date of the commencement of this Act used in S 39/40 of the Act would refer only to 15th July 1972 and to no other date We find no substance in this submission either It is true as has been urged by counsel for the respondent that this submission does not appear to have been made before the Supreme Court in the case of Vineet Kumar (1984 All LJ 102) (supra) That however in our opinion makes no difference Firstly it has been held by the Supreme Court in Somawanti v State of Punjab AIR 1963 SC 151 that the binding effect of a decision does not depend upon whether a particular argument was considered therein or not provided that the point with reference to which an argument was subsequently advanced was actually decided Secondly S 4 of the U P General Clauses Act which contains the general definitions starts with the words In all Uttar Pradesh Acts unless there is anything repugnant in the subject or context (Emphasis supplied)

4 In the normal course therefore on an interpretation of sub-sec (4) of S 1 of U P Act XIII of 1972 together with the notification issued under the said sub-section and the definition of the term commencement in sub-sec (10) of S 4 of the U P General Clauses Act the words the date of the commencement of this Act used in Ss 39/40 of U P Act XIII

of 1972 would have been 15th July 1972 alone But in our opinion the case falls within the purview of the term unless there is anything repugnant in the subject or context used in the opening part of S 4 of the U P General Clauses Act which contains the general definitions In this connection it may be pointed out that Ss 39 and 40 inter alia contemplate that the building in respect of which the suit for ejectment was pending on the relevant date should be one to which the old Act namely U P (Temporary) Control of Rent and Eviction Act 1947 (U P Act III of 1947) did not apply

5 As a consequence of the aforesaid provision the benefit of Ss 39 and 40 of U P Act XIII of 1972 could not be availed of by a tenant in a suit for ejectment if the building occupied by him was such to which the old Act applied Thus where an exception was sought to be made it was specifically provided If the intention of the Legislature was to make a similar exception in regard to such a tenant against whom no suit for ejectment was pending on 15th July 1972 which would be the date of commencement of U P Act XIII of 1972 according to S 1(4) thereof but was filed thereafter and the suit was in respect of a building to which U P Act XIII of 1972 did not apply on the date of the institution of the suit in view of S 2(2) thereof but became applicable to it during the pendency of the suit or during the pendency of the appeal or revision against the decree passed in the suit it would certainly have made a specific provision in this behalf as it made in regard to a building to which the old Act applied However this was apparently not done Provisions of Ss 39 and 40 of U P Act XIII of 1972 are in the nature of a beneficent piece of legislation and were intended to save a tenant from ejectment if he complied with the requirements of these sections If the words on the date of commencement of this Act used in Ss 39 and 40 are interpreted to mean 15th July 1972 the protection granted by these sections would not be available to the tenants of the category referred to above There seems to be no good ground to take the view that the Legislature intended to create such a discrimination The subject or context of Ss 39 and 40 therefore require that the definition of the word commencement contained in S 4(10) of the U P General Clauses Act should not be applied for interpreting that word with reference to Ss 39 and 40 aforesaid

6 In view of the foregoing discussion our answer to the question referred to us therefore is that the words the date of commencement of this Act used in Ss 39/40 of U P Act XIII of 1972 mean the date on which the provisions of the said Act became applicable to the building in respect of which the suit for ejectment was pending In other words if the provisions of the Act had already become applicable to the building on 15th July 1972 it will be that date which will be treated to be the date of commencement of this Act In respect of other buildings to which the provisions of the Act became applicable after 15th July 1972 the date of commencement of this Act would be the date on which that building becomes subject to the provisions of the Act within the meaning of S 2(2) thereof

7 Before parting with these cases we may point out that a common order or reference was made in these two cases and in Civil Revision No 250 of 1982 and Civil Revision No 252 of 1982 These two Civil Revisions were not listed before us It appears that Sri H S Joshi was appearing for the applicant in Civil Revision No 250 of 1982 and for the respondent in Civil Revision No 252 of 1982 and because of his death these revisions could not be listed till a notice was served on the parties represented by Sri H S Joshi to engage another counsel if they so desired Consequently we direct that these two cases namely Civil Revision No 367 of 1982 and Writ Petition No 9499 of 1983 in which the reference has been answered may be listed before Hon ble Mr Justice V K Mehrotra who had made the reference for hearing along with our answer to the question referred to us We further direct that Civil Revision Nos 250 of 1982 and 252 of 1982 may also be simultaneously listed before him for suitable orders

Order accordingly

1986 ALL L J 708

A N DIKSHITA J

Jagdish Prasad Petitioner v Ist Additional District Judge and others Respondents

Civil Misc Writ Petn No 5715 of 1980 D/ 8 10-1985

Constitution of India, Art 226 — U P (Temporary) Control of Rent and Eviction Act (3 of 1947), S 3(1)(c) — Writ jurisdiction — Scope — Allegations of material alteration by constructing Marhiyas on road leading to premises blocking the passage — No evidence that said Marhiyas were of mud and were of temporary nature liable to be removed without damaging premises — Such controversy cannot be decided by High Court in exercise of its extraordinary jurisdiction under Art. 226 because evidence will have to be adduced — Case remanded back to lower court to decide it afresh (Para 4)

Cases Referred	Chronological	Paras
AIR 1972 All 317	1972 All LJ 301 (FB)	3
AIR 1967 SC 643		3

S M Agarwal for Petitioner Y S Saxena and Standing Counsel for Respondents

ORDER — The instant petition under Art 226 of the Constitution has been filed by the petitioner praying for issuing a writ of certiorari for quashing the judgment and order dated 21 1 1974 passed by the Judge Small Causes Etah as well the judgment and order dated 18 2 1977 passed by the Ist Additional District Judge Etah (annexures 2 and 3 to the petition)

2 Briefly stated the facts are that the petitioner filed a suit for recovery of arrears of rent ejectment and damages against Hakim Singh Smt Kalawati Ram Singh and Sobaran Singh Hakim Singh died during the pendency of the suit while Smt Kalawati died during the pendency of the revision in the High Court and their heirs were brought on record The suit was filed on the allegations that the tenants committed default in the payment of rent and also that they had made material alterations by constructing two Marhiyas on the road leading to the premises thus blocking the passage The suit was contested by the defendants. The trial court, respondent No 2 dismissed the suit vide judgment and order dated 21 1 1974 Aggrieved by the judgment and order dated 21 1 1974 the petitioner preferred a revision to the court of the District Judge Etah respondent No 1 which was dismissed by respondent No 1 vide judgment and order dated 18 2 1977 Thereafter the petitioner filed a revision before this Court against the order dated 18 2 1977 but it was dismissed by this Court as not maintainable The petitioner then preferred the instant petition under Art 226 of the Constitution

3 Counsel for the parties have been heard. The sole contention made on behalf of the petitioner is that both the courts below erred in appreciating the provisions of S 3(1)(c) of the U P (Temporary) Control of Rent and Eviction Act 1947 (hereinafter called the Act) Admittedly the constructions were made on the road blocking the passage The only controversy which remains to be settled is whether such constructions of two Marhiyas constructed temporarily of mud would invite the application of S 3(1)(c) of the Act The Amin who had inspected the suit accommodation on 29 1 1970 had submitted a report which has been filed as Annexure I to the writ petition but it does not disclose that the Marhiyas are of mud It has also not been mentioned in the report whether the Marhiyas are of a temporary nature or are permanent constructions The contesting respondents while admitting the existence of the two Marhiyas submitted that by the mere construction of the two Marhiyas the provisions of S 3(1)(c) of the Act would not be attracted Respondent No 1 however came to the conclusion that the Marhiyas had been made at a distance of about 19 feet from the structure of the premises in question and were purely temporary in nature liable to be removed without damaging the front or the structure of the premises The contention of the learned counsel for the petitioner is that both the courts below erred in law in applying the provisions of S 3(1)(c) of the Act It would thus be expedient to extract the provisions of sub sec (c) of S 3(1) of the Act which reads

(c) that the tenant has without the permission in writing of the landlord made or permitted to be made any such construction as in the opinion of the Court has materially altered the accommodation or is likely substantially to diminish its value

It is thus clear that no qualifying words have been attached to the word construction in sub-section (c) of S 3(1) of the Act It is no doubt clear that the construction must have some connection with the accommodation or the premises that has been leased Such constructions may be inside the demised premises or outside or over it The Supreme Court in Manmohan Dass Shah v Bichun Das AIR 1967 SC 643 held that the landlord was entitled to a decree for the eviction of the tenant under S 3(1)(c) of the Act if he established that the constructions made by the tenant materially altered the accommodation and he was not required further to prove that the said constructions were likely to diminish substantially the value of the premises It observed

The expression material alterations in its ordinary meaning would mean important alterations such as those which materially or substantially changed the front or the structure of the premises It may be that such alterations in a given case might not cause damage to the premises or its value or might not amount to an unreasonable use of the leased premises or constitute a change in the purpose of the lease

The courts below found the constructions of the two Marhiyas Respondent No 1 went to the extent that the Marhiyas were temporary in nature and could be removed without damaging the front or the structure of the premises and thus concluded that the constructions were not at all substantial in nature A Full Bench of this Court in Sita Ram Sharan v John Mal 1972 All LJ 301 (AIR 1972 All 317) observed

The mere fact that the constructions can be removed does not alter the situation as almost any construction permanent or temporary can be removed Whether a construction is permanent or temporary is only a question of the intention of the person making it It does not affect the question whether the construction materially alters the accommodation or not

4 In the instant case the courts below have failed to examine that with the construction of the two Marhiyas the contesting respondents have materially altered the accommodation Similarly the other aspect that such a construction is likely substantially to diminish its value has also not been gone into There is no iota of evidence on record that the Marhiyas in dispute are of mud and are of a temporary nature liable to be removed without damaging the front or the structure of the premises The conclusion of respondent No 1 that the constructions are not at all substantial in nature is of no avail while appreciating the provisions enjoined in S 3(1)(c) of the Act It would have been appropriate for the courts below to have examined the two aspects namely whether the constructions had materially altered the accommodation or was likely substantially to diminish its value but this apparently has not been done Even the Marhiyas being made of mud bear a temporary nature is not borne out from the records before this Court In such cases it is expedient that an enquiry was made as regards the construction whether temporary or permanent so as to determine the controversy Learned counsel for the petitioner thus submitted that the instant controversy requires extensive examination and scrutiny which both the courts below have failed to do Such a controversy cannot be decided by this court in the exercise of its extraordinary jurisdiction under Art 226 of the Constitution because evidence will have to be adduced and scanned by the court the only appropriate relief which can be granted is to remand the case to respondent No 2 to decide the suit afresh after the parties have adduced their evidence Learned counsel for respondents Nos 3 to 8 has no substantial objection to it The petition in view of the discussions above deserves to be allowed

5 In the result the petition is allowed and the orders passed by respondents Nos 2 and 1 dated 21 1 1974 and 18 2 1977 respectively are hereby quashed The case is remanded to the Court of Judge Small Causes Kasganj Etah for a de novo trial in the light of the provisions as contemplated by S 3(1)(c) of the Act as well as the observations made above No order as to costs

Petition allowed

1986 ALL L J 710

B N SAPRU AND V N KHARE JJ

M/s Jupiter Chit Fund Pvt Ltd Kanpur and others Petitioners v State of U P and another Respondents

Civil Misc Writ Petn No 3831 of 1977 D/ 6-2 1986

(A) Chit Funds Act (40 of 1982), Ss. 1(3) and 90(1) — U.P Chit Funds Act (U.P Act No 53 of 1975), S 1 — Notification bringing Central Act into force not issued — U.P Act would not cease to be operative in State consequent upon enactment of Central Act ((i) Constitution of India, Art. 254(1) — (ii) General Clauses Act (10 of 1897), S 6)

U P Chit Funds Act did not cease to be operative in the State consequent upon enactment by Parliament of Central Act on the same subject in the absence of a notification bringing Central Act into force Case law discussed (Para 27)

Art 254 must not be construed to mean that State law would be repealed by an enactment of the Parliament in respect of the same field even though the Parliament has expressly provided that the law made by the Parliament shall come into effect at a future date Art 254(1) of the Constitution deals with a situation where a law made by the Parliament and another law made by the State legislature both purport to operate in the same field and the provisions thereof are in conflict Art. 254(1) does not deal with a situation where there is a possibility of conflict on the issuance of a notification bringing the law made by the Parliament in force (Para 26)

S 1(3) specifies that the Parliament Act shall come into force on such date as the Central Government may by notification in the official Gazette appoint. It is clear that in the absence of a notification under S 1(3) of the Parliament Act S 90 cannot come into operation and consequently there is no repeal of the U P Act by virtue of the provisions of S 90(1) of the Parliament Act (Para 28)

(B) U.P Chit Funds Act (53 of 1975), S. 1 — Validity — Act is within legislative competence of State. (Constitution of India, Sch 7 List 3 Entry 77) AIR 1981 SC 504 Foll (Para 29)

(C) U.P Chit Funds Act (53 of 1975), S 14 — U.P Chit Fund Rules (1976), R 17(1) — Validity of Act — Act cannot be held invalid on ground that bullion cannot be offered as security as provided by R 17(1)

U P Act cannot be struck down as ultra vires on ground that security of Bullion cannot be offered as required by R 17 because its possession is prohibited by a private citizen by virtue of Gold Control Act Merely because a part of R 17(1) is not capable of compliance the rule could not be struck down as ultra vires Even if R 17(1) is struck down because it prescribed gold bullion as one of the forms of security which can be offered by the foreman S 14 of the U P Act cannot be struck down because permissible security would be silver in the form of bullion or gold or silver in the form of manufactured article Security also can be offered in the form of bond or deposit of money or in the form of Government security (Para 31)

Cases Referred	Chronological	Paras
AIR 1982 SC 710	1982 Cri LJ 340	16
AIR 1981 SC 504		29
1979 All LJ 301		11
1979 All LJ 401 (FB)		8
AIR 1956 SC 246		11 24
AIR 1954 SC 752	1954 Cri LJ 1822	20
1896 AC 348	65 LJPC 26 24 LT 533 (PC) Attorney General for Ontario v Attorney General for the Dominion and the Distillers and Brewers Association of Ontario	17 20
(1882) 7 AC 829	51 LJPC 77 46 LT 889 (PC) Russel v Reg	19

Pranodh Gour for Petitioners Standing Counsel for Respondents

B N SAPRU, J — This writ petition along with several other writ petitions raising similar questions were heard together

2 There are 18 petitioners in this case All of them have claimed that they are engaged in the business of running chit funds in various parts of the Uttar Pradesh The petitioner No 14 is an association of the persons engaged in the business of running chit funds

3 When this writ petition was filed in the year 1977 the U P Chit Funds Act 1975 (U P Act No 53 of 1975) (hereinafter to be referred to as the U P Act) was in force The petitioners have challenged the constitutional validity of the U P Act on various grounds claiming that it interfered with their running of the business By the time this writ petition came up for hearing an Act of Parliament known as the Chit Funds Act 1982 (Act No 40 of 1982) (hereinafter to be referred to as the Parliament Act) had been enacted by the Parliament

4 The learned counsel for the petitioner Sri S S Bhatnagar in the forefront of his argument urges that by the enactment of the Parliament Act the U P Act stood repealed and consequently no restriction could be placed on the petitioners running their business under the provisions of the U P Act and the rules framed thereunder

5 It is necessary to mention here that S 1(3) of the Parliament Act provides that it shall come into force on such date as the Central Government may by notification in the Official Gazette appoint and different dates may be appointed for different States It is not disputed between the parties that no notification under Sec 1(3) of the Parliament Act has as yet been issued If the argument of Sri S S Bhatnagar appearing on behalf of the petitioners were correct there would be no law governing the operation of chit funds in the State of Uttar Pradesh as the Parliament Act has not been enforced and the U P Act stands repealed

6 Before proceeding further with the case it is necessary to state here that the subject matter of the U P Act and the Parliament Act is the same and they cover the same field It is settled law that if there is a repugnancy between an earlier State Act and the law enacted by the Parliament (Sic) would prevail as provided under Art 251 of the Constitution of India

7 Sri S S Bhatnagar has urged that as soon as the President gave his assent to the Parliament Act it became a statute and it automatically repealed the provisions of the U P Act by virtue of Art 254(1) of the Constitution of India

8 He has placed verystrong reliance upon a decision of a Full Bench of this Court in the case of Smt Chandra Rani v Vikram Singh 1979 All LJ 401 In that case the question was as to whether the proviso imposing limitations on the power of a Court to grant an injunction under O 39 R 1 C P C introduced by the U P Civil Laws (Reforms and Amendment) Act 1976 (U P Act No 57 of 1976) are repealed by the Civil Procedure Code (Amendment) Act 1976 (Act No 104 of 1976) enacted by the Parliament It was found that both the Central Act and the U P Act have been enacted by the competent legislature under Entry 13 of List III of VII Schedule of the Constitution of India The controversy that was raised in the case was as to whether the U P Act No 57 of 1976 should be considered as later Act within the meaning of Art 254 of the Constitution of India The facts were that the U P Act No 57 of 1976 had received the assent of the President on 31 12 1976 while the Central Act No 104 of 1976 received the assent of the President on 9-9 1976 a date anterior to 31 12 1976 It was held by the Full Bench that since the U P Act had received the assent of the President on a date later than the date on which the President gave assent to the Parliament Act the U P Act became the later Act within the meaning of Art 254 of the Constitution of India and would prevail over the Central Act and as such the amendments of the Code of Civil Procedure were effective in Uttar Pradesh

9 It is necessary to mention here that the date of enforcement of the Central Act was 1 2 1977 and that of the U P Act was 1 1 1977

10 Mr Justice K C Agrawal observed in para 26 of his judgment as follows

26 As already stated above the commencement of an Act can be postponed and so long as it is not to be in operation, the Act remains in abeyance But even in such a case through the operation of the substantive provisions of the Act remain in abeyance until the date which is specified by the State Government it is obvious that the section which empowers the State to appoint the date of commencement of the Act comes into operation on the passing of the Act Consequently an Act shall be deemed to have come into operation in the sense noted above from the date on which the assent is received This will be a governing factor to decide the

question whether that Act is former or later In the instant case the assent was given by the President to Central Act 104 of 1976 on 9 9 1976 whereas the U P Act 57 of 1976 received the assent on 21 12 76 that apart it would be further seen that the Bill of the State law was introduced in the State Legislature on 5 11 1976 It may further be noted that all these details would show that U P law is a subsequent law and it will prevail in the State under Art 254(2) despite any inconsistency with the provisions of the Principal Act or with the provisions as amended by Central Act 104 of 1976

11 In para 29 of the judgment he has further observed as follows —

29 A decision of Hon K N Goyal J in Civil Revn No 511 of 1978 Indira Finance Corporation v Prem Shanker Awasthi (decided on 15 9 1978) reported in 1979 All LJ 301 was brought to our notice in which he held that although the Central Act had been passed and assented to by the President earlier but since it was enforced with effect from a later date the Central Act had to be treated as later in point of time With great respect to the learned Judge I am unable to subscribe to the view then in that case It however appears that the aforesaid view was taken by the learned Judge because the decision given by the Supreme Court in A Thangal Kunju Musaliar v M Venkatachalam Potti AIR 1956 SC 246 (supra) had not been brought to his notice In my view the decision of brother K N Goyal holding that the Central Act will prevail over the State Act does not lay down the law correctly To this extent I am unable to agree with him

12 Mr Justice Yashoda Nandan in his judgment held that —

I can find no rational justification for holding that the words law occurring in Art 254 with reference to enactments other than existing laws has a different scope and is confined to enactments when enforced In view of these provisions in the Constitution itself I find no difficulty in concluding that the date of enforcement of an enactment is immaterial for the purpose of Art 254 of the Constitution and consequently it must be held that U P Act No 57 of 1976 was made on a date later than Act No 104 of 1976 In this view of the matter assuming that there is an inconsistency between any provision of the Code as amended by Act No 104 of 1976 and the amendments introduced by U P Act No 57 of 1976 the U P Amendments having received the assent of the President shall prevail

13 The learned Judges deciding the Full Bench case correctly came to the conclusion that a Bill becomes an Act on receiving the assent of the President The U P Act having received the assent of the President after the Central Act was therefore a later Act and would by virtue of the provisions of proviso to Art 254(2) of the Constitution of India would prevail in the State of Uttar Pradesh

14 In the present case the Parliament Act is undoubtedly later in date to the U P Act and would prevail if it was enforced

15 The question to be decided is as to whether by virtue of Art 254 of the Constitution of India the U P Act stands repealed in spite of the fact that no notification has been issued under S 143) of the Parliament Act

16 It is settled law that a statute may confer a power on an outside agency to bring into force the provisions of the Act The Supreme Court in the case of A K Roy v Union of India AIR 1982 SC 710 has in paragraph 51 of its judgment referred to various cases where such a power has been upheld and has followed the same It has noticed a statement of law made by H M Seervai in his Constitutional Law of India (2nd Edn at P 1203) in its judgment as follows

The making of laws is not an end in itself but is a means to an end which the legislature desires to secure That end may be secured directly by the law itself But there are many subjects of legislation in which the end is better secured by extensive delegation of legislative power There are practical difficulties in the enforcement of laws contemporaneously with their enactment as also in their uniform extension to different areas Those difficulties cannot be foreseen at the time when the laws are made It therefore becomes necessary to leave to the judgment of an outside agency the question as to when the law should be brought into force and to which areas it should be extended from time to time What is permissible to the Legislature by way of conditional legislation cannot be considered impermissible to the Parliament when in

exercise of its constituent power it takes the view that the question as regards the time of enforcement of a constitutional amendment should be left to the judgment of the executive We are therefore of the opinion that Sec 1(2) of the 44th Amendment Act is not ultra vires the power of amendment conferred upon the Parliament by Art 368(1) of the Constitution

17 The Privy Council in a well known decision in the case of Attorney General for Ontario v Attorney General for the Dominion and the Distillers and Brewers Association of Ontario reported in 1896 AC 348 had to consider the provisions of the British North America Act and in particular Ss 91 and 92 thereof The Privy Council observed at page 366 of its judgment that —

It has been frequently recognised by the Board and it may now be regarded as settled law that according to the scheme of the British North America Act the enactments of the Parliament of Canada in so far as these are within its competency must override provincial legislation

18 After dealing with various other questions the Privy Council observed that —

The question must next be considered whether the provincial enactments of S 18 to any and if so to what extent come into collision with the provisions of the Canadian Act of 1886 In so far as they do provincial must yield to Dominion legislation and must remain in abeyance unless and until the Act of 1886 is repealed by the Parliament which passed it

19 The Canada Temperance Act of 1878 provides that it will come into force in a particular district of the province after certain percentage of voters adopt for coming under its provisions and an order in Council had been made In the case before the Privy Council such an order of the Council had not been made It was therefore held that the Provincial Act would continue to govern within that particular district as the Canada Temperance Act was not in force in the District as no order in council had been made In a crucial para of the judgment their Lordships observed as follows

It thus appears that in their local application within the Province of Ontario there would be considerable difference between the two laws but it is obvious that their provisions could not be in force within the same district or province at one and the same time In the opinion of their Lordships the question of conflict between their provisions which arises in this case does not depend upon their identity or non identity but upon a feature which is common to both Neither statute is imperative their prohibitions being of no force or effect until they have been voluntarily adopted and applied by the vote of a majority of the electors in a district or municipality In Russell v Reg (1882) 7 AC 829 at p 841 it was observed by this Board with reference to the Canada Temperance Act of 1878 The Act as soon as it was passed became a law for the whole Dominion and the enactments of the first part relating to the machinery for bringing the second part into force took effect and might be put in motion at once and every where within it No fault can be found with the accuracy of that statement Mutatis mutandis it is equally true as a description of the provisions of S 18 But in neither case can the statement mean more than this that on the passing of the Act each district or municipality within the Dominion or the province as the case might be became vested with a right to adopt and enforce certain prohibitions if it thought fit to do But the prohibitions of these Acts which constitute their object and their essence cannot with the least degree of accuracy be said to be in force anywhere until they have been locally adopted If the prohibitions of the Canada Temperance Act had been made imperative throughout the Dominion their Lordships might have been constrained by previous authority to hold that the jurisdiction of the Legislature of Ontario to pass S 18 or any similar law had been superseded In that case no provincial prohibitions such as are sanctioned by S 18 could have been enforced by a municipality without coming into conflict with the paramount law of Canada For the same reason provincial prohibitions in force within a particular district will necessarily become inoperative whenever the prohibitory clauses of the Act of 1886 have been adopted by that district But their Lordships can discover no adequate ground for holding that there exists repugnancy between the two laws in districts of the province of Ontario where the prohibitions of the Canadian Act are not and

may never be in force In a district which has by the votes of its electors rejected the second part of the Canadian Act the option is abolished for three years from the date of the poll and it hardly admits of doubt that there could be no repugnancy whilst the option given by the Canadian Act was suspended The Parliament of Canada has not either expressly or by implication enacted that so long as any district delays or refuses to accept the prohibitions which it has authorized the provincial Parliament is to be debarred from exercising the legislative authority given it by S 92 for the suppression of the drink traffic as a local evil Any such legislation would be unexampled and it is a grave question whether it would be lawful Even if the provisions of S 18 had been imperative they would not have taken away or impaired the right of any district in Ontario to adopt and thereby bring into force the prohibition of the Canadian Act

Their Lordships for these reasons give a general answer to the seventh question in the affirmative They are of opinion that the Ontario Legislature had jurisdiction to enact S 18 subject to this necessary qualification that its provisions are or will become inoperative in any district of the province which has already adopted or may subsequently adopt the second part of the Canada Temperance Act of 1886

20 Sri S S Bhatnagar argued that the Supreme Court has not accepted the decision of the Privy Council in the abovementioned case and referred to the decision of the Supreme Court in the case of Zaverbhai Amaidas v State of Bombay AIR 1954 SC 752 wherein the abovementioned Privy Council decision was referred to In para 7 of the judgment it was observed as follows —

(7) This is in substance a reproduction of S 107(2) of the Government of India Act the concluding portion thereof being incorporated in a proviso with further additions Discussing the nature of the power of the Dominion Legislature Canada in relation to that of the Provincial Legislature in a situation similar to that under S 107(2) of the Government of India Act it was observed by Lord Watson in Attorney General for Ontario v Attorney General for the Dominion 1896 AC 348 (PC) that though a law enacted by the Parliament of Canada and within its competence would override provincial legislation covering the same field the Dominion Parliament had no authority conferred upon it under the Constitution to enact a statute repealing directly any provincial statute That would appear to have been the position under S 107 (2) of the Government of India Act with reference to the subjects mentioned in the concurrent list Now by the proviso to Art 254 (2) the Constitution has enlarged the powers of Parliament and under that proviso Parliament can do what the Central Legislature could not under S 107(2) of the Government of India Act and enact a law adding to amending varying or repealing a law of the State when it relates to a matter mentioned in the Concurrent List The position then is that under the Constitution Parliament can acting under the proviso to Art 254(2) repeal a State law But where it does not expressly do so even then the State law will be void under that provision if it conflicts with a later law with respect to the same matter that may be enacted by Parliament

21 This decision only points out that British North America Act did not give power to the Dominion Legislature to repeal a provincial statute whereas the Constitution by virtue of Art 254 gives the Parliament such a power The Supreme Court has not however dissented from the Privy Council decision in regard to the other questions decided by the Privy Council This decision of the Supreme Court is therefore of no assistance to Sri S S Bhatnagar

22 As we read the Privy Council decision we find that unless the Federal Legislation is actually enforced in a particular area the law made by the provincial legislature will continue to operate It is only when the Federal Legislation is enforced the State legislation will give way and ceased to be effective

23 In this view of the matter since the Parliament Act has not been enforced by issuance of a notification under Sec 1(3) of the Parliament Act the U P Act continues to govern the field

24 In T K Musahar v Venkatachalam AIR 1956 SC 246 Travancore legislature had on 7 3-1949 enacted Act 14 of 1124 styled as Travancore Taxation on Income (Investigation Commission) Act 1124 providing for an

investigation into matters relating to taxation on income Section 1(3) of the Act provided that it was to come into force on such date as the Travancore Government may by notification in the Government Gazette appoint Before any notification could be issued under S 1(3) there was an integration of the State of Travancore and the State of Cochin By virtue of Ordinance I of the 1124 promulgated on the same day called the United States of Travancore and Cochin Administration and Application of Laws Ordinance 1124 (Ordinance I was later enacted as Act VI of 1125) All existing laws of Travancore were to continue in force till altered amended or repealed by competent authority The existing law of Travancore was defined to mean any law in force in the State of Travancore immediately prior to 1 7 1949 On 26-7 1949 a notification was published in the Travancore Cochin Government Gazette The High Court had held that no notification under S 1(3) could be issued appointing a Commission as Act No 14 of 1124 passed by the Travancore legislature was not a law in force in Travancore This argument was repelled by the Supreme Court and it was noticed that S 1(3) by virtue of which there was a power to issue a notification bringing into force the provisions of the Act was a law in force in the State and consequently the notification was validly issued This case is of no assistance to either of the parties

25 The effect of the decision is that even in the absence of a notification being issued by the Central Government under Sec 1(3) of the Parliament Act the Act is on the Statute book and is a law applicable to India It does not however mean that the Act is in force in its entirety

26 Article 254 sub cl (1) of the Constitution provides for a situation where there is an inconsistency between the law made by the Parliament and the law made by the legislature of a State By virtue of cl (1) to Art 254 where a law made by a legislature of a State is repugnant by a law made by the Parliament the law made by the Parliament shall prevail over the law made by the Legislature and the law of the State legislature in so far as it is repugnant to the law made by the Parliament, shall be void This Article does not mean that a State law would stand repealed even though a law made by the Parliament is not in force and the law made by the Parliament would when it is enforced be repugnant to the law made by a legislature of a State and render the State law void Article 254 must not be construed to mean that State law would be repealed by an enactment of the Parliament in respect of the same field even though the Parliament has expressly provided that the law made by the Parliament shall come into effect at a future date Nature ad hors a vacuum and if Mr S S Bhatnagar s argument is accepted a vacuum would be created because the State Act would stand repealed and the Act made by the Parliament would not be in force Article 254 (1) of the Constitution of India deals with a situation where a law made by the Parliament and another law made by the State Legislature both purport to operate in the same field and the provisions thereof are in conflict Article 254(1) does not deal with a situation where there is a possibility of conflict on the issuance of a notification bringing the law made by the Parliament in force

27 We are in the circumstances satisfied that Sri S S Bhatnagar is not correct in his argument that the U P Act ceased to be operative in the State consequent upon the enactment of the Parliament Act

28 Sri S S Bhatnagar urges that even in the absence of a notification under Sec 1(3) of the Parliament Act the U P Act stood repealed by virtue of the provisions of S 90 of the Parliament Act which repealed the Acts specified in sub-sec (1) thereof and in the list of the Acts repealed is the U P Act (the Uttar Pradesh Chit Funds Act 1975) He submits that the language of S 90(1) is peremptory and repealed the Acts specified in sub-sec (1) and applied the provisions of S 6 of the General Clauses Act to the Acts repealed as if each of such Acts so repealed were Central Act Section 1(3) specifies that the Parliament Act shall come into force on such date as the Central Government may by notification in the Official Gazette appoint It is clear that in the absence of a notification under Sec 1(3) of the Parliament Act Sec 90 cannot come into operation and consequently there is no repeal of the U P Act by virtue of the provisions of Sec 90(1) of the Parliament Act

29 Sri S S Bhatnagar has urged that the

U P Act was beyond the legislative competence of the State legislature and the legislation could only be enacted under Entry 97 of List I of VII Schedule to the Constitution of India This argument can also not be accepted The matter is really covered by a decision of the Supreme Court in the case of Srinivasa Enterprises v Union of India AIR 1981 SC 504 In that case the Parliament had enacted the Prize Chits and Money Circulating Schemes (Banning) Act 1978 (Act No 43 of 1978) It was held by the Supreme Court that the legislative entry under which the Act was made fell within Entry 77 of List III of the VII Schedule The State Act therefore must be held to be within the legislative competence of the State

30 We have not to consider the argument advanced by Sri S S Bhatnagar that certain provisions of the U P Act read with rules made thereunder are arbitrary and since they are part of the machinery sections of the Act the whole Act is unworkable and must be so declared Section 14 requires that every foreman shall before the commencement of a chit fund business provide a security prescribed under S 14 Rule 17(1) provides that the security referred to in S 14 shall be either in gold or silver in the form of bullion or manufactured article Sri S S Bhatnagar urges that bullion cannot be given as security as its possession is prohibited by a private citizen by virtue of the Gold Control Act

31 Section 14 provides for various kind of securities Under Cl (a) thereof it may consist of a bond in favour of or in trust for the other subscribers for the proper conduct of the chit charging property sufficient to the satisfaction of the Registrar for the realisation of twice the chit amount, or sub-cl (b) thereof provides that it may consist of a deposit in an approved bank an amount equal to the chit amount or invest in Government securities of the face value of not less than one and half time the chit amount and transfer the amount so deposited or the Government securities in favour of the Registrar to be held in trust by him as security for the due conduct of the chit These provisions are for the protection of the subscribers There are many instances of cheating of subscribers and the legislature was conscious of the need to protect the interest of the subscribers Where the money in cash was to be deposited the amount required to be deposited was equal to the chit amount whereas in other forms of securities to be given the amount of security was higher than the chit amount This was obviously to cover those cases where the value of the property offered as security would come down or would be difficult to realise It may be that the gold bullion cannot be given as security as required under R 17(1) but silver or gold in form of manufactured articles nevertheless can be offered as security Merely because a part of R 17(1) is not capable of compliance the rule could not be struck down as ultra vires Even if we strike down R 17(1) because it prescribed gold bullion as one of the forms of security which can be offered by the foreman Sec 14 of the U P Act cannot be struck down because permissible security would be silver in the form of bullion or gold or silver in the form of manufactured article Security also can be offered as mentioned earlier in the form of bond or deposit of money or in the form of Government security

32 In view of the fact that we have rejected the arguments of Sri S S Bhatnagar we do not consider it necessary to express any opinion on the submissions of the Advocate General that even if we assume that the Parliament Act had the effect of repealing the U P Act the petitioners liability would continue and they would be bound by the U P Act because of the provisions of Sections 85 and 90(2) of the Parliament Act

33 In the result the writ petition is dismissed with costs

34 Under the interim order of this court dated 26 9 1977 confirmed on 28 1 1981 it was provided that the respondents would not take steps to enforce any liability against the petitioners for contravention of the provisions of the Act provided the petitioners made a deposit as mentioned in the interim order dated 26-9 1977 We direct that if the deposits have been made as directed by the orders of this Court or security had been furnished to the satisfaction of the Registrar the Registrar shall determine whether any amount is payable by the petitioners and the petitioners shall pay the same and if the Registrar finds that there is no such liability he shall direct the return of the amount and the security if so furnished shall be discharged The Registrar should complete this part of the work as soon as

possible The petitioners are directed to co operate with the Registrar

35 We further direct that since the petitioners operated their business under the interim orders of this Court no penal action should be taken against them unless they have run their business without complying with the interim orders of this Court The petitioners will however not be at liberty to carry on their business any further except in accordance with the provisions of the U P Chit Funds Act 1975

36 We also direct that any ongoing chit funds scheme sponsored by the petitioners which were permitted under the interim orders of this Court may continue till they come to an end by efflux of time This direction is being given to protect the interest of the existing subscribers

Petition dismissed

1986 ALL L J 717

S D AGARWALA J

Gorakh Nath Upadhya Applicant v State of U P and others Respondents

Civil Revn No 653 of 1983 D/ 22 1 1986 *

Civil P C (5 of 1908), Ss. 96, 115, 2(2), O 7 R 11 — Word Decree" includes rejection of plaint — Order rejecting plaint is appealable — Revision to High Court is not maintainable

The word Decree includes the rejection of a plaint Where by an order under O 7 R 11 the name of one of the defendants has been struck off by the trial court on the ground that the plaint does not disclose any cause of action against such defendant and the suit has been dismissed as against him the order in effect determines the right of the plaintiff to bring a suit against such defendant therefore such an order under O 7 R 11 amounts to a decree and hence appealable The order being appealable revision against such order is not maintainable In the instant case because of the valuation of the suit the appeal lay to the High court and revision before it was not maintainable (Paras 11 13 16)

*Against order of Rakesh Dutt Civil Judge Ballia D/ 17 11 1983

Cases Referred	Chronological Paras
AIR 1973 SC 2384	12
AIR 1964 SC 497	13
AIR 1931 All 333 (2)	15

A N Bhargava for Applicant D S Sinha Addl Chief Standing Counsel for Opposite Parties

ORDER — This is a Civil Revision filed under S 115 C P C

2 The revisionist Gorakh Nath Upadhyaya filed a Suit No 48 of 1979 in the court of the Civil Judge Ballia against opposite party Nos 2 to 17 for recovery of Rs 5 00 000/ as damages for malicious prosecution Sri Saibal Kumar Mukherjee opposite party No 2 was the then District Magistrate of Ballia This revision is being contested on his behalf alone

3 During the pendency of the suit Issues Nos 15 and 17 were decided as preliminary issues by order dated 17th Nov 1983 by the Civil Judge Ballia Issues Nos 15 and 17 were to the effect as to whether the suit is liable to be rejected under O 7 R 11 C P C as against opposite party No 2 and as to whether the opposite party No 2 is liable to be discharged as no cause of action has been shown to exist against him

4 The Civil Judge Ballia by his order dated 17th Nov 1983 decided both the issues in favour of opposite party No 2 It was held that the plaint did not disclose any cause of action against opposite party No 2 and consequently the suit was dismissed as against the opposite party No 2 under O 7 R 11 C P C It was further held that since no cause of action was disclosed against the opposite party No 2 the opposite party No 2 is liable to be discharged as a party in the said suit The order dated 17th Nov 1983 has been challenged by means of the present revision in this Court by the plaintiff revisionist

5 I have heard the learned counsel for the revisionist as well as the learned counsel appearing for the contesting opposite party No 2 Sri Saibal Kumar Mukherjee

6 Learned counsel for the revisionist has contended firstly that the Civil Judge has acted wholly without jurisdiction in deciding issues Nos 15 and 17 as preliminary issues Secondly it has been argued that in any case on merits the view taken by the court below that no cause of action is disclosed against the

opposite party No 2 is a finding manifestly erroneous Thirdly it has been argued that under O 7R 11 C P C the Court could reject the entire plaint and not reject the plaint in part only against one defendant and lastly it has been submitted that sufficient particulars were available in the plaint and the court below has erred in law in holding that the particulars, as required under O 6 R 4 C P C are lacking

7 Learned counsel for the opposite party No 2 has however raised a preliminary objection that a revision is not maintainable against the order dated 17th Nov 1983 and as such, the question of considering the validity of the order on merits does not arise at all

8 I will first consider the preliminary objection raised by the learned counsel for the opposite party No 2

9 In the operative portion of the order dated 17th Nov 1983 which has been challenged in the present revision it has been directed that the plaint would be rejected under O 7 R 11 CPC as against opposite party No 2 for having disclosed no cause of action

10 Order 7 R 11 C P C empowers the Court to reject a plaint where it does not disclose a cause of action S 2(2) C P C defines a decree as under

2(2) decree means the formal expression of an adjudication which so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final It shall be deemed to include the rejection of a plaint and the determination of any question within Sec 144 but shall not include —

(a) any adjudication from which an appeal lies as an appeal from an order or

(b) any order of dismissal for default

11 It is clear from the above mentioned definition of the word decree that it includes the rejection of a plaint In view of the specific provision an order rejecting a plaint clearly amounts to a decree If it amounts to a decree an appeal lies against the order dated 17th Nov 1983

12 In Shamsher Singh v Rajinder Prashad AIR 1973 SC 2384 it has been held as under

In the present case the plaint was rejected under O 7 R 11 of the C P C Such an order amounts to a decree under Sec 2(2) and there is a right of appeal open to the plaintiff

The decision in the case of Shamsher Singh v Rajinder Prashad (Supra) fully applies in the present case In the circumstances it is clear that against the order dated 17th Nov 1983 an appeal lies

13 In Major S S Khanna v F J Dhillon AIR 1964 SC 497 the Hon ble Supreme Court had an occasion to consider the scope of Sec 115 C P C It opined as under —

If an appeal lies against the adjudication directly to the High Court or to another Court from the decision of which an appeal lies to the High Court it has no power to exercise its revisional jurisdiction but where the decision itself is not appealable to the High Court directly or indirectly exercise of the revisional jurisdiction by the High Court would not be deemed excluded

The Supreme Court consequently has held that where an appeal lies to the High Court the High Court has no power to exercise its revisional jurisdiction In the instant case the valuation of the suit is Rs 5 00 000/ In the circumstances an appeal clearly lies to the High Court If an appeal clearly lies to the High Court the High Court as held above has no power to exercise its revisional jurisdiction In view of the above I am of the opinion that against the impugned order an appeal lies and as such the present revision is not maintainable in law

14 There is another aspect of the matter By the impugned order the name of the opposite party No 2 has been struck off by the trial court on the ground that the plaint does not disclose any cause of action against the opposite party No 2 and the suit has been dismissed as against him The order in effect determines the right of the plaintiff to bring a suit against the opposite party No 2 This clearly amounts to a decree and as such is also appealable

15 In Shair Ali v Jagmohan Ram AIR 1931 All 333 (2) a Division Bench of this Court after examining the provisions of O 1 Rule 10(2) C P C has held as under —

Order 1 R 10 Cl (2) Civil P C provides that the Court may at any stage of the proceeding order that the name of any party improperly joined whether as plaintiff or defendant be struck out An order striking out

the name of a party is not necessarily a decree Where the plaintiff had impleaded a person merely upon the ground of convenience and the plaint discloses no cause of action against him and the plaintiff has claimed no relief against him the order of the Court directing the removal of the name of such a defendant does not operate as a decree for it has not the effect of an adjudication and the integrity of the original claim remains unbroken Where however a cause of action against a defendant has been specifically pleaded and a distinct relief has been claimed against him the order directing the removal of his name from the array of parties is in substance although not in form a decree because the effect of the order is the refusal to grant the relief to the plaintiff which he had prayed for against him Defendant 2 was not impleaded only for the sake of convenience The plaintiff had sued him because of an alleged cause of action against him and the plaintiff had prayed for a decree against him for Rs 1 000 as damages The effect of the order passed by the Munsif is the virtual dismissal of the suit against him and the latter has been awarded his costs from the plaintiff We are clearly of opinion that the order sought to be revised was in substance a decree and was open to appeal as such

16 The principle laid down by the Division Bench fully applies to the present case In this view of the matter also the impugned order dated 17th November 1983 amounts to a decree and, as such an appeal would lie against the said order and the revision would not be maintainable Since I am of the view that an appeal lies and a revision is not maintainable it is not necessary for me to go into the merits of the submissions raised by the learned counsel

17 In the result the revision fails and is dismissed as not maintainable The parties are directed to bear their own costs

Revision dismissed

1986 ALL L J 719

B D AGRAWAL J

Mahendra Kumar Jain and others Applicants v State of U P and others Opposite Parties

Criminal Misc Appln No 15712 of 1985 D/ 21 1 1986

CD/ED/B461/86/SMA

(A) U P Dacoity Affected Areas Act (31 of 1983), S 7(2) — Trial of scheduled offence by special court — Procedure — Accused summoned by Special Judge for scheduled offence — Objection that list of prosecution witnesses required under S 204(2) Cr P C was not filed cannot be raised — S 7(2) excludes procedure relating to inquiry from being invoked in trial before Special Judge (Criminal P C (2 of 1974), S 204(2))

(Para 6)

(B) U P Dacoity Affected Areas Act (31 of 1983), S 7(2) — Trial of scheduled offence by Special Judge — Procedure — Accused summoned by Special Judge for offence under S 395 I.P C — Objection that all witnesses for complainant were not examined as required by S 202(2) Proviso Cr P C cannot be raised in view of S 7(2) (Criminal P C (2 of 1974), S 202(2) Proviso)

(Para 6)

Cases Referred	Chronological Paras
1985 Cri LJ 1363 1985 All WC 381	7

P K Jain for Applicants Vinod Kumar Sharma and Dileep Kumar for Opposite Parties

ORDER — This is an application under Section 482 Code of Criminal Procedure

2 First information report was lodged at Police Station Tundla district Agra by Anil Kumar Jain (opposite party No 2) on November 30 1984 against the applicants for offence under Section 395 Indian Penal Code The police submitted final report at the conclusion of the investigation to the Special Judge Agra constituted under the U P Dacoity Affected Areas Act 1983 (hereinafter referred to as the U P Act 31 of 1983) A protest petition was filed in matter on March 15 1985 The Special Judge recorded the statements of witnesses for the complainant and under the impugned order dated November 6 1985 he summoned the applicants accused for offence under Section 395 Indian Penal Code

3 Learned counsel for the applicants contends that the cognizance taken by the Special Judge Agra, is vitiated for the following reasons —

(i) a list of the prosecution witnesses required under Section 204(2) Criminal Procedure

Code was not filed from the side of the complainant

(ii) All the witnesses for the complainant were not examined as required under the proviso to sub-section (2) of Section 202 of the Code

(iii) There is contradiction between the averments contained in the first information report referred to above and the affidavit filed by R K Jain dated November 30 1984 which is Annexure 5 to the application R K Jain it may be pointed is the father of Anil Kumar Jain

(iv) The statement of Smt Mama Devi one of the injured persons made before the Special Judge is discrepant

4 I have heard learned counsel for the parties and considered the grounds referred to above but I do not find any basis made out for interference in the exercise of the inherent jurisdiction There is no dispute that this arises from a dacoity affected area within the meaning of section 2(a) of the U P Act 31 of 1983 Section 7 of this Act lays down the procedure and powers of Special Courts The expression Special Court according to Section 2(e) means court constituted under Section 5 Section 5 empowers the State Government to constitute a Special Court in consultation with the High Court for the purpose of speedy trial of scheduled offences committed in a dacoity affected area Offence under Section 395 falls within scheduled offences as enumerated in the Schedule appended to the Act read with Section 2(b) The procedure and powers of Special Courts prescribed in Section 7 are as under —

(1) A Special Court may take cognizance of any scheduled offence

(a) upon receiving a complaint of facts which constitute such offence

(b) upon police report of such facts

(c) upon information received from any person other than a police officer or upon its own knowledge that such offence has been committed

Provided that all cases triable by a Special Court under this Act pending before any court immediately before the date of the commencement of this Act in a dacoity affected area, shall stand transferred to the special Court having jurisdiction over such cases and shall be dealt with and disposed of in accordance with the provisions of this Act

(2) A Special Court shall while trying a scheduled offence so far as may be follow the procedure provided by the Code of Criminal Procedure 1973 for trial of sessions cases

Provided that the Special Courts may wherever necessary perform the functions of a Magistrate under section 227 of the said Code and proceed to try the case as if the case had been committed to Court of Session for trial under the provisions of such Code

(3) Save as otherwise expressly provided in this Act the provisions of the Indian Evidence Act 1872 and the Code of Criminal Procedure 1973 shall in so far as they are not inconsistent with the provisions of this Act apply to the proceedings before a Special Court and for the purposes of the provisions of the said Code the Special Court shall be deemed to be a Court of Session and the person conducting the prosecution before a Special Court shall be deemed to be a public prosecutor

(4) A Special Court may with a view to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to any scheduled offence tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other persons concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall for the purpose of section 308 of the said Code be deemed to have been tendered under section 307 thereof

(5) A Special Court may pass upon any accused person convicted by it any sentence authorised by law for the punishment of offence of which such person is convicted

5 From the above it will be noticed clearly that there is a dichotomy maintained between inquiry on the one hand and the trial on the other As per sub section (2) a Special Court while trying a scheduled offence so far as may be follows the procedure provided in the Code for trial of sessions cases The proviso to sub-section (2) enables the provision contained in Section 207 of the Code also to be availed by the Special Judge Sections 200 202 are placed in Chapter XV (Complaints to Magistrates) Section 200 is attracted where a Magistrate takes cognizance of an offence on complaint Section 202 comes in picture also where cognizance is to be taken by a Magistrate on a complaint. Section 204 pertains to Chapter XVI (Commencement of Proceedings before Magistrates) This again is attracted where th

consideration is before a Magistrate for taking cognizance of an offence It is in relation to a Magistrate issuing a summons or warrant as the case may be under Section 204(1) that the sub-section (2) lays down that no such process shall issue against the accused until a list of the prosecution witnesses has been filed Section 209 which also falls in Chapter XVI lays down the procedure for commitment of cases to the Court of Session when offence is triable exclusively by it In so far as the Act 1983 is concerned there is no question of commitment of the case to the Court of Session There is no inquiry preceding as such the trial

6 The Special Judge is empowered to take cognizance straightway in accordance with sub-section (1) of Section 7 of this Act and then proceed as laid thereinafter Sub-section (2) significantly talks of the procedure provided by the Code of trial of sessions cases This does not cover what is laid down in the Code in relation to inquiry Section 207 of the Code makes provision for the supply to the accused of copy of police report and other documents This has been expressly incorporated in the proviso to sub-section (2) for obvious reasons to enable the accused even in such trials to have the relavant documents But for the rest the procedure envisaged in the Code relating to inquiry including the commitment to the Court of Session is excluded by necessary implication The reason behind is clearly understandable since the complaint lies to the Special Judge straightway as such and there has to be no commitment made to him there arises no question of invoking Sections 200 202 or 204 for that matter Inquiry is clearly distinct from trial and this is manifest also on reference to the definition given to the expression inquiry in Section 2(q) of the Code Inquiry according to this definition is other than a trial and is conducted under the Code by a Magistrate or Court I am conscious that according to Section 4 of the Code offences under any law other than the Penal Code have ordinarily to be investigated enquired into and tried according to the same provisions But in sub-section 4(2) itself there is exception where there is any other enactment for the time being in force regulating the manner or place or investigation inquiry or trial. According to sub-section (3) of Section 7 of the Act 1983 also the procedure laid in the Code does not apply in so far as it is inconsistent with the provisions of this Act Sub section (2) of Section 7 as explained above excludes the procedure relating to inquiry from being invoked where the trial takes place before the Special Judge except in so far as Section 207 of the Code is concerned This means in other words that in the case as at present there may be no objection raised from the side of the applicants accused based on the grounds Nos (i) and (ii) aforementioned are concerned

7 Learned counsel appearing for the opposite parties contended that before proceeding to take cognizance and summoning the accused applicants the Special Judge has taken care to record the statements of the entire set of witnesses The witnesses examined by the Special Judge are the two injured persons namely Smt Ganga Devi and Smt Maina Devi besides the four alleged eye witnesses namely Mahendra Singh Mohan Lal Rafiq Hardam Singh and also the two Medical Officers besides the Investigating Officer This, according to the complainant constitutes the entire lot of witnesses as appearing also from the reference made in the protest petition There was it is true no separate list appended as such to the protest petition which for all practical purposes is drawn in the form of a complaint But this is altogether immaterial since Section 204 or Sections 200/202 of the Code for that matter are inapplicable A learned single Judge has taken the same view in Jitendra Pratap Singh v State of U P 1985 All WC 381 (1985 Cri LJ 1363) It is only by way of satisfaction before taking cognizance that the Special Judge may be said to have recorded these statements

8 In so far as grounds Nos (iii) and (iv) aforementioned are concerned suffice it may to say that the court is not called upon to enter into the merits at this stage and these are things which do not go to the root of the jurisdiction either It remains open to the accused to put them in cross examination if so advised to the witnesses concerned The procedure adopted by the Special Judge obviously does not suffer from illegality nor is there the lack of jurisdiction so as to attract the summary powers of this court under Section 482 of the Code

9 The application accordingly fails and is

dismissed in limini The interim stay granted on November 30 1985 is vacated

Application dismissed

1986 ALL L J 722

N N SHARMA J

Bheem Singh Applicant v State of Uttar Pradesh and another Opposite Parties

Criminal Revn No 521 of 1982 D/ 6-12 1985

Criminal P C (2 of 1974), S 145 — Proceeding under — Revival of — Validity

Where the Magistrate in a proceeding under S 145 cancelled the preliminary order of attachment of property and dropped the proceeding merely on the basis of police report without receiving evidence from parties or directing them to adduce evidence revival of proceeding was not invalid In fact no valid final order had been drawn in this proceeding under S 145 sub-cl (4) of the Criminal P C No evidence was received nor parties were directed to adduce such evidence nor any enquiry was conducted The mere assertion by a party that there was no longer any apprehension of breach of peace or the mere report of police that there was no fresh out break of violence or from the fact that the parties were peacefully living could not justify the dropping of the proceedings In this case the Magistrate at any stage of proceeding had not conducted any enquiry nor recorded a valid final order A preliminary order could be cancelled only when there had been some settlement between the parties or the opposite party made it clear that they had not claimed nor had any intention to assert claim to the possession of the property in dispute 1975 Cri LJ 1026 (All) (FB) Rel on AIR 1977 SC 2432 1981 All LJ 831 and 1973 Cri LJ 4 (All) Distinguished (Para 20)

Cases Referred Chronological	Paras
1981 All LJ 831	17
AIR 1977 SC 2432 1978 Cri LJ 187	14
1975 Cri LJ 1026 1975 All LJ 99 (FB)	20
1973 Cri LJ 4 1972 All WR (HC) 726	18

J C. Pandey for Applicant A Thapalyal and Lokendra Dehnal for Opposite Parties

BD DD A882 86 SRK

ORDER — This revision is directed against order dt 17 3 1982 recorded by Sub Divisional Magistrate Pithoragarh in Case No 176 of 1976 in proceedings under S 145 Cr P C by which the learned Magistrate ordered revival of the proceedings under sec 145 Cr P C in pursuance of the order of learned Sessions Judge dt 11 3 1980 in Criminal Revision No 4 of 1978 recorded by Sri B B L Hajeley against order dt 10-1 1978 dropping the proceedings under Sec 145 Cr P C

2 It appears that there was a triangular contest about house No 985 situate in Vina district Pithoragarh

3 Bhim Singh applicant and Km Lila Waldia opposite party No 1 claimed the house in dispute as owners Km Lila Waldia further alleged herself to be in occupation of a portion of that house while the remaining portion is alleged to have been let out to Sri S P Sharma opposite party No 2 The contention of applicant Bhim Singh was that opposite party No 2 S P Sharma was his tenant and on account of a rift there arose an apprehension of breach of peace amongst the parties Km Lila Waldia had absolutely nothing to do with the house in dispute which was his exclusive property

4 It was on the application of Bhim Singh dt 23-12 1976 that the aforesaid proceedings were initiated under S 145 Cr P C The police report was invited by the Sub-Divisional Magistrate concerned The first report submitted by the police is dt 28 12 1976 which was to the effect that there was an apprehension of breach of peace and Sri N C Pandey the then S D M Pithoragarh recorded a preliminary order under S 145 Cr P C calling upon the parties to appear on 7 1 1977

5 On 23-12 1976 another application also was moved by Bhim Singh alleging that in view of the emergent situation attachment of the disputed property was desirable On that application Sri N C Pandey S D M attached the disputed property under S 146 Cr P C on 28 2 77 It was further ordered that attachment shall continue until question of possession was decided by a competent Court

6. Written statements were filed by the parties disclosing their rival contention

7 However on 20 12 1977 Sri S P Sharma opposite party No 2 moved an application before S D M that he used to be the tenant of Bhim Singh in the attached house and has shifted to another house and consequently there was no longer any apprehension of breach of peace He further prayed that the disputed house be delivered to Bhim Singh An affidavit in support of that application was also filed

8 Learned S D M invited a second report from police which reported on 7 1 1978 that there was no longer any apprehension of breach of peace as Km Lila Waldiya was a teacher in a school in village Pokhra where she resided Sri S P Sharma has taken another house in his tenancy and shifted from house in dispute

9 Accepting this report learned S D M set aside the attachment and ordered delivery of house in possession of Bhim Singh

10 Km Lila Waldiya applied for review of that order on the ground that the aforesaid order was not final but was subject to the result of revision (Criminal Revision No 4 of 1978) already preferred by her

11 Learned S D M directed the parties to appear on 18 1 1978 vide order dt 13-1 1978 and disposed of that application by rejecting the same on 27 2 1978 on the ground that having perused the reports of police and heard arguments of learned counsel for the parties there was no occasion to allow that application of Km Lila Waldiya The orders dt 10-1 1978 and 28 2 1977 were set aside on 11 3 1980 by learned revisional Court It was thereafter that another order was recorded by learned Magistrate on 16-6 1980 by which learned Magistrate ordered the record to be consigned with an observation that there was no occasion to go behind his earlier order as the apprehension of breach of peace had ceased

12 On 17 3 1982 the learned counsel for the parties were again heard and the proceedings were ordered to be revived in pursuance of the directions of the order of learned revisional Court This order is being assailed in this revision

13 I have heard Sri B P Gupta and Sri J C Pandey learned counsel for the revisionist and Sri L Debnal learned counsel for the opposite party and learned A G A and perused the record

14 The impugned order has been assailed by learned Advocate for the revisionist on the ground that having once recorded an order on 10-1 1978 that there was no apprehension of breach of peace and having reiterated the same in his order dt 27 2 1978 it was not open to S D M concerned to revive the proceedings An order once recorded by the Magistrate was not reviewable as was held in Bindeswari Prasad Singh v Kali Singh reported in AIR 1977 SC 2432 A perusal of the facts of that case would go to disclose that it was not a proceeding under S 145 Cr P C

15 The complaint in that case had been disposed of by a judicial order by the learned Magistrate and so it was not open to him to review or recall that order

16 So the aforesaid authority is not in point

17 The next authority relied upon by the learned advocate has been reported in Gajpat Rao v Smt Ladli Kunwar 1981 All LJ 831 which provides that in a proceeding under S 145 Cr P C when a preliminary order has been drawn under S 145 sub-el (1) Cr P C and at a subsequent stage a party applies for non existence of apprehension of breach of peace it was mandatory for the Magistrate to dispose of that application after affording an opportunity to the parties of proving the truth of such allegation Rejection of such application without giving opportunity to parties was not an interlocutory order Thus the argument developed was that it was a final order now when the Magistrate found that there was no apprehension of breach of peace and thus not revisable or reviewable by him

18 Learned counsel for the revisionist further relied upon Hari Shanker v Bali reported in 1972 All WR (HC) 726 (1973 Cri LJ 4) In that case Magistrate passed a valid order under S 145 Cr P C cancelling the proceedings and directing one of the parties to retain possession unless evicted therefrom in due course of law The proceedings came to an end and magistrate could not assume jurisdiction to recall the earlier order

19 All these contentions are devoid of

force It is obvious that the orders prior to 11 3 1980 have been set aside by learned Sessions Judge in Criminal Revision No 4 of 1978 Under that order of the Sessions Judge the Magistrate was directed to proceed further with the matter and S D M was bound to give effect to that order In this order learned Sessions Judge rightly pointed out that the Magistrate forged that Km Lila Waldiya was the main contestant who asserted that her household effects were lying in a portion of that house She also filed a written statement to that effect A mere look at the record shall go to disclose that learned Magistrate did not conduct any enquiry as to possession No opportunity was afforded to the parties to adduce evidence A look at the order sheet shall go to disclose that no statements of the parties were recorded to the effect that they did not want to adduce any evidence at all When Lila Waldiya had already preferred a revision against the order dt 10 1 1978 dropping the proceedings there was no longer any jurisdiction in the Magistrate to observe in the subsequent order dt 27 2 1978 that he was sticking his earlier view as expressed on 10-1 1978 All these orders had been washed away by the order of the revising Court

20 In fact no valid final order had been drawn in this proceeding under S 145 sub-cl (4) of the Criminal P C No evidence was received nor parties were directed to adduce such evidence nor any enquiry was conducted It was held in Gajraj v C Singh 1975 All LJ 99 (1975 Cri LJ 1026) (FB) that it was obligatory on the Magistrate to decide the matter after conducting an enquiry The mere assertion by a party that there was no longer any apprehension of breach of peace or the mere report of police that there was no fresh out break of violence or from the fact that the parties were peacefully (living?) could not justify the dropping of the proceedings. In this case the learned Magistrate at any stage of proceeding had not conducted any enquiry nor recorded a valid final order A preliminary order could be cancelled only when there had been some settlement between the parties or the opposite party made it clear that they had not claimed nor had any intention to assert claim to the possession of the property in dispute Km Lila Waldiya was consistent on the point that there was apprehension of breach of peace The order dt. 10-1 1978 recorded by learned Magistrate without hearing Km Lila Waldiya was without jurisdiction Since the aforesaid orders were illegal so learned Sessions Judge was perfectly justified in allowing that revision and ordering further enquiry into the matter in accordance with law

21 In this view of the matter I do not find any merit in this revision which is dismissed Interim order dated 6 7 1982 is vacated herewith

Petition dismissed

1986 ALL L J 724

B L YADAV J

Mohd Islam and another Petitioners v State of U P and others Respondents

Civil Misc Writ Petn No 6050 of 1980 D/ 2 12 1985

Urban Land (Ceiling and Regulation) Act (33 of 1976), S 8(3) — Declaration of surplus land — Ex parte order — Order passed without issuing a draft statement, and without serving notice for filing objections against draft statement — Order is without jurisdiction

Where an ex parte order of declaration of surplus land was passed without serving in prescribed manner a draft statement along with a notice that objections might be filed against draft statement within thirty days as contemplated under S 8(3) the provision being mandatory order would be liable to be quashed as without jurisdiction (Para 11)

Cases Referred	Chronological	Paras
AIR 1980 SC 303		4 11
AIR 1980 All 198	1980 Tax LR NOC 69 (FB)	4 10
1979 All LJ 1174	1979 All WC 585 AIR 1980 NOC 6 (FB)	4 9

M/s V B Singh Uma Shanker Singh for Petitioners, Standing Counsel for Respondents

ORDER — This petition under Article 226 of the Constitution arises out of proceedings under the Urban Land (Ceiling & Regulation) Act 1976 (for short the Act)

2. The facts leading to this petition are that the petitioners were tenure holders of plots Nos 62 and 63 situate in village Chak Niratul, Tahsil Chail, district Allahabad These plots were situated at the outskirt of the city of Allahabad and they were under the Municipal Corporation and were governed by the provisions of the Act The petitioners submitted a return under Section 6(1) of the

Act on 15 9-76 before the Competent Authority Allahabad and the same was registered as Case No 1066 of 1976 (State v Mohammad Islam & others) Thereafter no notice was received by the petitioners about the order passed on the statement filed by the petitioners under Section 6(1) of the Act On 8 3 79 some official of the Ceiling Department enquired about the petitioners residence and informed them that some part of the plots of the petitioners has been declared as surplus by an ex parte order dated 20-6-78 (Annexure-1 to the petition) The petitioners immediately thereafter moved an application for restoration purporting to be under Section 45 of the Act read with Section 151 Order 9 Rule 13 of the C P C for recalling the ex parte order stating that the petitioners were not served with any draft statement issued under Section 8 of the Act and no service was effected in view of procedure contemplated by Section 8(2) of the Act and the relevant rules The ex parte order was illegal without any notice to the petitioners and was passed without hearing them hence the same may be recalled

3 The Competent Authority however rejected the said application by order dated 12 8 79 (Annexure 2 to the petition) The petitioners appeal under Section 33 of the Act also met the same fate It is against these two orders the present petition has been filed

4 Sri H C Kharbanda learned counsel for the petitioners urged that the procedure contemplated by Section 8 (3) of the Act was mandatory and condition precedent for passing any subsequent order against the petitioners and unless a notice as contemplated by this provision was served, in the manner prescribed, no further order can be passed on the draft statement and as no notice was served on the petitioners all the subsequent proceedings were illegal and without jurisdiction The order declaring surplus land was also without jurisdiction The learned counsel placed reliance on Laxmi Narain Anand Prakash v Commr of Sales Tax U P AIR 1980 All 198 (FB) Shantanu Kumar v State of U P 1979 All WC 585 (1979 All LJ 1174) (FB) and Sharifuddin v Abdul Ghani Lone AIR 1980 SC 303

5 The learned standing counsel appearing for the State urged that the impugned orders were correct and no interference was required and whether the petitioners were served with notice or not was a finding of fact and the petition was devoid of merits

6 I have heard the learned counsel for the parties The main point for consideration in this petition is as to whether any notice was served on the petitioner as contemplated by Section 8(3) of the Act In order to appreciate the controversy it would be better to set out the relevant provision of Section 8

8 Preparation of draft statement as regards vacant land held in excess of ceiling limit (1) on the basis of statement filed under Sec 6 and after such enquiry as the Competent Authority shall prepare a draft statement in respect of a person who has filed the statement under Section 6

(m) the draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within 30 days of the service thereof

7 Further Rule 5 of the Urban Land (Ceiling & Regulation) Rules 1976 provides the procedure of service of notice and Rule 5(2) specifically lays down that the draft statement shall be served together with the notice referred in the sub-sec (3) of Section 8 on the holder of the vacant land and all other persons so far as may be known who have or likely to have any claim to or interest in the ownership or possession or both of the vacant land, by sending the same by registered post addressed to the person concerned

8 In the instant case it has not been alleged on behalf of the respondents that notices were served on the petitioners as contemplated by Section 8(3) and Rule 5(2) It was alleged in para 17 of the writ petition that before the District Judge the petitioners have taken a specific plea that the notice as contemplated by Section 8(3) of the Act was not served on them, hence the petitioners could not file any objection against the draft statement within time This paragraph has been replied in para 15 of the counter-affidavit filed by one Raj Pati Tewari, Naib-Tahsildar Urban Land Ceiling, Allahabad and in that paragraph it has not been mentioned that the notices were actually served by registered post on the petitioners, rather it has been stated that after the publication of

final order under Section 10(1) of the Act in the official gazette every body including the petitioners will be deemed to have knowledge of the orders The procedure under Section 10(1) of the Act is of the stage when the vacant land in excess of the ceiling limit has been acquired and the same is published with a view that the said vacant land would be acquired by the concerned State Government and this notification is made in the official gazette But after the draft statement is prepared and served on the holder of the land and he files objection within thirty days or may be thereafter by explaining the delay and after considering the same the surplus land is declared by making alteration in the draft statement in view of Section 9 hence all that was subsequent to the service of notice on the petitioners But as no notice was served on the petitioners and even the respondents did not deny the relevant statement contained in the writ petition I am accordingly of the view that no notice was served on the petitioners Hence all the subsequent proceedings for determination of surplus land and publication of the same was without jurisdiction

9 In Shantanu Kumar v State of U P (1979 All LJ 1174) (supra) a Full Bench of this Court held in similar circumstances that the service of notice as contemplated by Rule 8 of the U P Imposition of Ceiling on Land Holdings Rules was preliminary to the acquisition of jurisdiction to proceed in the matter to declare the land as surplus In case the notice as required by Rules was not served all the subsequent proceedings about the declaration of surplus land would be without jurisdiction and liable to be quashed

10 In Laxmi Narain Anand Prakash v Commr of Sales Tax U P (AIR 1980 All 198) (supra) a Full Bench of this Court in similar circumstances considering the effect of Section 2 of the U P Sales Tax Act, 1947 and Rules 77 of the rules framed thereunder held that the service of notice on the assessee was a condition precedent In that case notice was served not actually on the assessee but on some other person who was not concerned with the assessee and in that connection it was held that the entire proceedings were vitiated Even though the assessee might have participated in the proceedings but that would not give any jurisdiction to the authority to proceed in the matter and to decide the case against the assessee The principle of estoppel was held not to be applicable nor just on the basis of consent or waiver the jurisdiction can be conferred on any particular authority if it lacks the same

11 In Sharif uddin v Abdul Ghani Khan Lone (AIR 1980 SC 303) (supra) the Supreme Court held that where a particular statute prescribes a mode to be followed in proceeding in any matter that any particular act has to be done in a particular manner and also indicates that failure to comply with the same would result in some consequences it cannot be held that the requirement was not mandatory In the instant case as the statutory requirement was in pursuance of the procedure prescribed under Section 8(3) of the Act the draft statement was to be served in the manner prescribed on the person concerned along with a notice that the objection may be filed against the draft statement within thirty days I am of the view that this provision was mandatory Further Rule 5(2) also prescribes that the notice as contemplated by Section 8 of the Act shall be served by registered post addressed to the person concerned But as the same was not done hence the Competent Authority has no jurisdiction to pass the order ex parte against the petitioners I am accordingly of the view that the impugned orders are manifestly erroneous and cannot be sustained

12 In the result the petition succeeds and is allowed The impugned orders dated 16-4-80 and 20-6-78 as also the official publication in the gazette dated 26-7 78 and 17 11 78 are hereby quashed The Competent Authority is however directed to decide the matter afresh after serving the notice about the draft statement on the petitioners in accordance with the procedure prescribed Under the circumstances, there shall be no order as to costs

Petition allowed

1986 ALL L J 727

B D AGARWAL J

Ram Kishore and others Applicants v State of Uttar Pradesh and others Opposite Parties

Criminal Misc Appln No 651 of 1986 D/ 20 1 1986

Criminal P C (2 of 1974), S 195(1)(b)(ii) — Complaint before Magistrate that alleged sale deed was executed by accused impersonating complainant — Complainant subsequently filing suit to set aside sale deed — It was not shown that sale deed was filed in original in civil Court — Held, that there was no suit pending when cognizance was taken and hence bar under S 195(1)(b)(ii) was not attracted

(Para 4)

Cases Referred	Chronological	Paras
AIR 1983 SC 1053	(1983) 4 SCC 240	1983
Cri LJ 1599		3
1983 Cri LJ 24	1982 All WC 716	3
1982 Cri LJ 424	1982 All WC 1	3 5
AIR 1981 SC 1417	1981 All Cri C 112	1981
Cri LJ 1019		3

Surendra Prasad, for Applicants Standing Counsel for Opposite Parties

ORDER — Heard learned counsel

2 On Dec 23 1983 (1985 ?) the opposite party No 2 brought a complaint in writing against the applicants in the Court of the Munsif Magistrate Gyanpur district Varanasi, contending in brief that on November 28 1983 the applicants had in furtherance of common intention got a deed of sale executed in favour of Ram Kishore (applicant No 1) by Amar Nath (applicant No 3) representing however that the executant is the complainant (Shyam Kishore alias Kishori Lal) The contention is that the complainant did not in fact, execute the deed in question and that Amar Nath has impersonated for the complainant in this respect Subsequent to the statement recorded under Ss 200/202 Code of Criminal Procedure the accused were summoned for the offence under Ss 419, 467 468 and 471 Indian Penal Code The statement of the complainant under S 244 of the Code has also been recorded An application was made from the side of the complainant in the trial Court under S 294(1) of the Code Section 294(1) provides that where any document is filed before any Court by the prosecution the particulars of every such document shall be included in a list and the accused or his counsel shall be called upon to admit or deny the genuineness of such document The complainant had got summoned from the office of the Sub Registrar the deed of sale impugned dated Nov 28 1983 The application was made in respect of this document To this there was objection raised from the side of the accused The objection has been overruled by order of the Court below dated August 29 1985 Aggrieved the accused applicants have approached this Court under S 482 of the Code

3 Learned counsel contends that the Munsif Magistrate could not take cognizance in view of S 195(1)(b)(ii) of the Code since there is a suit instituted by the complainant in the Civil Court for the cancellation of the deed of sale dated November 28 1983 It may not be doubted that though the offence under Ss 419 467 and 468 Indian Penal Code is not specifically referred to in Section 195(1)(b)(ii) these are covered in view of the reference made therein to the offence described in S 463 of the Indian Penal Code and since the offence under these sections is said to arise from the same transaction vide State of Karnataka v Hamareddy 1981 All Cri C 112 (AIR 1981 SC 1417 Smt Maharaji v Rama Shanker 1982 All WC 716 (1983 Cri LJ 24) Ram Pal Singh v State of U P 1982 All WC 1 (1982 Cri LJ 424) and Gopalkrishna Menon v D Rajja Reddy (1983) 4 SCC 240 (AIR 1983 SC 1053)

4 The material fact however is that as the learned counsel for the applicants accused admits the suit in the civil Court was instituted by the opposite-party No 2 the complainant for cancellation of the deed of sale subsequent to the filing of the complaint dated Dec 23 1983, meaning thereby in other words that on the date when the complaint was filed and also when cognizance was taken thereon by the Munsif Magistrate there was no suit in the civil Court pending The bar created under S 195(1)(b) is to the effect that no Court shall take cognizance of any offence referred to therein when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding

in any Court This, therefore stands in the way of cognizance being taken by the criminal Court in the particular situation arising as mentioned thereunder Since in the present the cognizance had been taken by the criminal Court prior to the proceeding in the civil Court coming into existence and before the document could be produced or given in evidence in the civil proceeding it is obvious that S 195(1)(b)(ii) is not attracted Secondly from the material placed before me it is not indicated that in the civil Court the impugned deed of sale has been filed in original From the order impugned dated August 29 1985 it is clear on the contrary that the deed of sale has been summoned from the side of the complainant in the criminal Court from the office of the Sub-Registrar In the objection raised from the side of the accused in the Court below it is nowhere indicated that the deed of sale in original had been produced in the civil Court For both these reasons namely that the cognizance had been taken prior to the institution of the suit in the civil Court and since it is not shown that the deed of sale had been filed in original in the civil Court, the accused cannot, in my opinion invoke the aid of S 195(1)(b)(ii) aforesaid

5 In Ram Pal Singh v State of U P 1982 All WC 1 (1982 Cri LJ 424) (supra) cited for the applicants this Court held that the provisions of S 195(1)(b)(ii) apply also to cases where an offence of the nature specified therein is committed prior to the institution of the proceeding in which the concerned document is eventually produced or filed and cognizance of such offence at the instance of private complaint would be barred This is not the point arising in the present It is not of consequence that the document impugned had come into being before the suit in the civil Court was filed the material factor is that the cognizance of the offence had been taken by the criminal Court prior to the institution of the civil suit and that is not derecognized by virtue of anything contained in this provision The complainant was not debarred from coming to the criminal Court in other words on Dec 23 1985 as he did for the obvious reason that on that date there had been no proceeding in the civil Court initiated in respect of this transaction or the impugned instrument of transfer For these reasons there is no merit in the contention for the accused applicants that the cognizance taken by the Court below in the matter is vitiated or rendered illegal In view thereof the complainant had the right to avail of S 294(1) of the Code in this case

6. The application accordingly fails and is dismissed

Application dismissed

1986 ALL L J 728

B N SAPRU AND V N KHARE JJ

M/s Ram Brick Field and another Petitioners v State of Uttar Pradesh and another Respondents

Civil Misc Writ Petn No 1168 of 1984 D/ 29 11 1985

(A) Mines and Minerals (Regulation and Development) Act (67 of 1957), Ss 21(5) and 15(3) — U.P Minor Minerals (Concession) Rules 1963, Rule 21 — Manufacture of bricks — Liability to pay royalty — Kiln owners are liable even though they did not obtain permit or lease from Govt. to manufacture bricks.

(Para 14)

(B) Mines and Minerals (Regulation and Development) Act (67 of 1957), Ss. 21 (5) and 15(3) Proviso (as amended in 1970) — U.P Minor Minerals (Concession) Rules 1963, R. 21 — Enhancement of rate of royalty for using mud in manufacturing bricks — No limitation to enhance in any period of time — Rule valid when framed but power of enhancement could be exercised only once in four years under S 15(3) after amendment — Held, that to bring Rule in conformity with S 15(3) Proviso four years could be substituted for two years.

(Para 20)

(C) Mines and Minerals (Regulation and Development) Act (67 of 1957), Ss. 21 (5) and 15(3) — U P Minor Minerals (Concession) Rules 1963, Rule 21 — Manufacture of bricks — Fixation of amount of royalty — Pits mouth value — Consideration

It cannot be contended that pit s mouth value of the extracted earth is related to the value of the land in a particular a-ea It is obvious that the cost of production of a mineral is a very relevant factor in determining its pit s mouth value In the instant case the

material placed by the petitioners for challenging the fixation of royalty on the ground that it exceeds 20 per cent of the pit s mouth value is insufficient and the fixation cannot be successfully questioned on this ground (Para 24)

(D) Mines and Minerals (Regulation and Development) Act (67 of 1957), Ss 21(5) and 15(3) — U P Minor Minerals (Concession) Rules 1963, R 54(1) — Manufacture of bricks — Payment of royalty — Demand for royalty in advance under Rule 54(1) — It is valid

Both the manner of collection and the rate of royalty are prescribed by Rule 54(1) of the Rules There is no prohibition in Section 15(3) of the Act on the demand for royalty in advance Rule 54(1) of the Rules under which royalty can be demanded in advance is therefore valid It may be that in a case where the quantity of mineral consumed is less than the estimated consumption on the basis of which the royalty has been paid by the holder of a mining lease or mineral concession the said person would be entitled to a refund (Para 27)

Cases Referred	Chronological Paras
AIR 1983 J & K 68	11
AIR 1976 SC 1393	5
AIR 1975 All 386	6 9
AIR 1972 Punj & Har 356 (FB)	10

S S Agnihotri for Petitioner Standing Counsel for Respondents

B N SAPRU, J :— The petitioners M/s Ram Brick Field and M/s Achhumal and Sons are the brickskiln owners They alongwith a large number of other brickkiln owners whose petitions have been heard along with this writ petition have challenged the demand for royalty for the use of earth for manufacturing the bricks for the year 1983 84

2 The controversy in this case is identical with the controversy in other cases Though there are certain differences on facts in the cases but they are not material The period for which the royalty has been demanded also varies in some of the other cases but that will have no effect on the decision in any of those cases

3 The petitioners assert that they are carrying on business of manufacture of bricks and they had obtained permits for the manufacture of bricks for the financial year 1982 83 The petitioners are aggrieved by the Government Order dated 27 3 1982 under which they have been directed to pay royalty at the rate of Rs 2 00 per thousand bricks as provided under the First Schedule to the U P Minor Minerals (Concession) Rules 1963 (hereinafter to be referred to as the Rules)

4 The petitioners contend that they are the owners of the land and as such they are not liable to pay any royalty

5 It has been settled by the Supreme Court that the rights of the former zamindars in the mines and minerals were extinguished with the enforcement of the U P Zamindari Abolition and Land Reforms Act 1951 It has further been held that the right to the minerals had passed to the State as a consequence of the aforesaid Act and the State is the owner of the minerals See in this connection AIR 1976 SC 1393 Bhagwan Dass v State of Uttar Pradesh

6 In the case of Sharma and Company v State of Uttar Pradesh AIR 1975 All 386 it has been held that brick earth is a minor mineral within the meaning of Section 3 of the Mines and Minerals (Regulation and Development) Act 1957 (hereinafter to be referred to as the Act) and every person would have to pay the royalty for extracting earth for manufacture of bricks

7 The petitioners case is that they did not apply for the grant of permit during the financial year 1983 84 as all the brickkiln owners had decided not to run their brickkilns in protest against certain laws being made applicable to the brickkilns as also the increase in royalty but nevertheless a demand of Rs 5 000/ for royalty has been made as against them for the year 1983 84 In the counter affidavit it has been stated that the petitioner continued to manufacture bricks during the financial year

8 We in the circumstances cannot place reliance on the petitioners assertion that the petitioners did not manufacture bricks during the financial year 1983 84 It is apparent that the brickkiln industries did not cease to operate in the financial year 1983-84 though a large number of brickkiln owners did not obtain the permits In any case the writ

petition cannot be decided on the footing that the petitioners did not carry on the manufacture of bricks during the financial year 1983 84

9 There is a further submission on behalf of the petitioners that even assuming that the petitioners extracted earth to manufacture bricks they are not liable to pay the royalty as they had neither executed a lease nor obtained a permit for manufacturing bricks from the State It is said that it is only those brickkiln owners who had obtained the lease or the permit were liable to pay the royalty The petitioners assert that they can only be prosecuted for having violated the rules for extracting earth for manufacture of bricks For this the petitioners have relied upon certain observations made in the case of Sharma and Company v State of Uttar Pradesh AIR 1975 All 386 wherein it has been held that a person who extracts earth but obtains no lease or permit the royalty cannot be recovered and he can only be prosecuted

10 Another decision on which reliance is placed is a Full Bench decision of Punjab and Haryana High Court in the case of Amar Singh Modi Lal v State of Haryana AIR 1972 Punj and Har 356 In this case in paragraph 54 of the judgment it was observed as follows

54 With disarming fairness Mr J N Kaushal on behalf of the respondent State concedes that he has no answer to this contention raised on behalf of the petitioners It is admitted that no agreement or contract is subsisting between the respondents and either of the petitioners The legal position that unless there is such a subsisting contract no royalty can be levied is not controverted on behalf of the State Consequently Mr Kaushal clearly states that in the present two cases he cannot support the levy of the royalty and also the validity of the notices issued against the petitioners for its recovery In terms it has been stated that on this point the two petitions are entitled to succeed

11 To the same effect is a decision of the Jammu and Kashmir High Court in the case of Bharat Kiln v Officer in charge D M O AIR 1983 J & K 68

12. In none of these cases the provisions of Section 21(5) of the Act was noticed

13 Section 21(5) of the Act runs as follows

21(5) Whenever any person raises without any lawful authority any minerals from any mines the State Government may recover from such persons the minerals so raised or where such mineral has already been disposed the price thereof and may also recover from such person the rent royalty or tax as the case may be for the period during which the land was occupied by such person without any lawful authority

14 In view of the provisions of Section 21(5) of the Act it must be held that the petitioners are liable to pay the royalty even though they did not obtain the permits or lease from the Government for the manufacture of bricks

15 It has been urged that Rule 21 of the Rules which provides for the payment of royalty is invalid as it is provided that the rate of royalty in respect of any minerals shall not be raised more than once in any period of two years It is submitted that under Section 15(3) of the Act which is the section which authorises the State Government to make rules the proviso to sub section (3) of Section 15 provides that the State Government shall not enhance the rate of royalty in respect of any minor minerals for more than once in any period of four years

16 The Uttar Pradesh Minor Minerals (Concession) Rules 1963 were published in the U P Gazette dated 14 9 1963 vide Notification No 1575 M/XVIII R M 95 58 dated 20-8 1963 At that time there was no sub section (3) in Section 15 of the Act In other words there was no limitation on the power of the State Government to enhance the rate of royalty in any period of time Sub section (3) of section 15 of the Act came into force on 12 9 1970 The rules were therefore valid when framed

17 In this case the rate of royalty right from 1975 was Rs 1 50 per thousand bricks and it was enhanced to Rs 2 00 per thousand bricks by the U P Minor Minerals (Concession) (10th Amendment) Rules 1982 which substituted a new First Schedule which prescribed the rate

18 What had happened was that the rate

of royalty was Rs 1 50 per thousand bricks but the brickkiln owners were given an option to pay to royalty at a fixed rate in lieu of paying the royalty on the amount of bricks manufactured by them A lump sum amount was calculated on an estimated number of bricks to be manufactured by the brickkiln owners in a financial year It was also said that the estimate for manufacturing bricks would be increased every year by 5 per cent which meant that the amount required to be paid as a lump sum in lieu of royalty would be enhanced by 5 per cent in each financial year

19 The rate of royalty was enhanced only in 1982 when the first Schedule was amended and the rate was prescribed at Rs 2-00 per thousand bricks There was thus no enhancement of rate of royalty within four years of 1982 Therefore the argument raised about the invalidity of sub rule (2) of Rule 21 of the Rules fails

20 We may add here that sub rule (2) of Rule 21 was valid when it was enacted It came into conflict with the provisions of section 15(3) of the Act when the proviso to Section 15(3) of the Act was added We would read down Rule 21(2) to save its validity and would substitute four years for two years in the Rule and bring it in conformity with the proviso to Section 15(3) of the Act but we are not driven to the situation in the instant case

21 It has also been urged that the amount of royalty prescribed is excessive as it comes to more than 20 per cent of the pit s mouth value of the earth extracted The petitioners assertion is that the pit s mouth value is calculated by dividing the area from the value of the land from where the mineral is being taken out It is stated that —

For example one Bigha area is equal to 108900 c ft The value at present of one bigha area in the case of the petitioner is Rs 8000/

One bigha area produces 1306800 bricks Therefore for 1000 of bricks the pit s mouth value will be Rs 6 and 12 paise only If 20% of it be calculated then it will come to Re 1 and 22 paise only per thousand

22 It is further submitted in paragraph 23 of the writ petition that —

It is pertinent to mention here that 80% of brickskiln in U P are situate over the lease land which are taken on lease by the Brickkiln owners for three or four years at a time and in their cases the value of the land is estimated at a rate from three to four thousand rupees per bigha and as such in their cases the pit s mouth value comes near about half of what has been calculated in the above mentioned paragraph

23 The assertions of the petitioners in paragraphs 22 and 23 of the writ petition about the pit s mouth value has been denied in the counter affidavit In paragraph 22 of the counter affidavit it is stated that —

The pit s mouth value of the mineral means —

the sale price at the point of manufacturing or the cost of production of the product plus profit In this para only the cost of the land had been included in the calculation The labour cost in digging mixing moulding burning handling etc has not been added As such the rate of Rs 2/ per thousand bricks fixed by the State Government is well within the 20% of the pit s mouth value of the bricks

24 It is not possible to accept the contention of the petitioners that pit s mouth value of the extracted earth is related to the value of the land in a particular area It is obvious that the cost of production of a mineral is a very relevant factor in determining its pit s mouth value The material placed by the petitioners for challenging the fixation of royalty on the ground that it exceeds 20 per cent of the pit s mouth value is insufficient and the fixation cannot be successfully questioned on this ground

25 Then it is urged that the Rule required the petitioners to deposit the royalty for the total quantity of the mineral permitted to be extracted on the grant of the permit is invalid In other words the challenge is to the provisions of Rule 54(1) which makes such a provision The argument is that Section 15(3) of the Act provides that —

(2) The holder of a mining lease or any other mineral concessions granted under any rule made under sub section (1) shall pay royalty in respect of minor minerals removed or consumed by him or by his agent manager employee contractor or sub-lessee at the rate prescribed for the time being in the rules

framed by the State Government in respect of the minor minerals

26 It is submitted that unless the minerals have been removed or consumed there can be no demand for royalty

27 Section 15(3) of the Act provides for the payment of royalty by the holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty in respect of minor minerals removed or consumed by him or on his behalf does not either prescribe the rate of royalty or the manner of its collection Both the manner of collection and the rate of royalty are prescribed by Rule 54(1) of the Rules There is no prohibition in Section 15(3) of the Act on the demand for royalty in advance Rule 54(1) of the Rules is therefore valid It may be that in a case where the quantity of mineral consumed is less than the estimated consumption on the basis of which the royalty has been paid by the holder of a mining lease or mineral concession the said person would be entitled to a refund That position does not emerge in the present case

28 In the result we find no merits in any of the arguments advanced on behalf of the petitioners

29 The writ petition is consequently dismissed with costs The stay order dated 9-4-1984 is hereby vacated

Petition dismissed

1986 ALL L J 732

S D AGARWALA J

Smt Urmila Tuli Applicant v Prakash Bhalotia and another Opposite Parties

Civil Revn No 335 of 1981 D/ 28 10-1985

Civil P C (5 of 1908), O 15 R. 5 (U.P.) — Striking off defence — Trial Court not striking off defence in spite of non-compliance of O 15, R. 5 and granting decree for arrears of rent only — Striking off defence on remand by successor for default prior to earlier decree — Action is arbitrary

BD J D 1987 SC BNG 5NN

Where in suit for ejectment and arrears of rent the trial court in spite of default in compliance with provisions of O 15 R 5 proceeded to hear suit considered the defence of the tenant and passed decree only for arrears of rent and not for ejectment it meant by implication that the trial court exercised its discretion not to strike off the defence and there was no application made in that behalf by the landlord in the trial court nor any representation was either made by tenant under O 15 R 5(2) striking off defence by the successor after remand of the case on the ground of default occurring before passing of the decree earlier would not be proper exercise of discretion under O 15 R 5

(Para 9)

Cases Referred Chronological	Paras
1981 All LJ 908 AIR 1981 SC 1657	8
1981 All LJ 82	8

V B Kharey for Applicant

ORDER — This is a civil revision filed under S 25 of the Provincial Small Cause Courts Act A suit No 4 of 1977 was filed by Prakash Bhalotia plaintiff opposite party No 1 for ejectment of the applicant and Major Dhirendra Nath Singh opposite party No 2 from a shop in dispute and for arrears of rent amounting to Rs 3,600/ This suit was decreed for arrears of rent but dismissed in regard to ejectment by an order passed by the Ist Additional District Judge dated 29th November 1978 exercising the power of Provincial Small Cause Courts Act Against this judgment the plaintiff opposite party filed a revision No 530 of 1979 against the refusal to grant a decree for ejectment and sought a modification of the decree passed by the court below This revision came up for hearing before Hon ble Gopi Nath J (as he then was) who by judgment dated 17-4-1980 remanded the case to the court below for a fresh decision This court held that the Act No XIII of 1972 was applicable to the property in dispute and as such it was necessary to determine whether the defendants in the suit were defaulters within the meaning of S 20(1)(a) of the Act So far as the decree for arrears of rent is concerned it becomes final

2 After the remand by this court the plaintiff opposite party moved an application (56 C) on 9th December 1980 requesting the

court to strike off the defence of the defendants This application was allowed by the court on 8 5 1981 The defence was struck off Against the order dated 7 5 1981 the present revision has been filed by the defendant applicant

3 I have heard the learned counsel for the parties Learned counsel for the revisionist has contended that once the trial court decided the suit it implied that the trial court did not think it proper to strike off the defence In the previous revision in this court also this question was not raised by the plaintiff opposite party and as such the court below has acted arbitrarily and unreasonably in the exercise of his discretion in striking off the defence

4 Order XV Rule 5(1) of the Code of Civil Procedure provides as follows —

(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation the defendant shall at or before the first hearing of the suit deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid the court may subject to the provisions of sub rule (2) strike off his defence

Sub clause (2) of Order XV Rule 5 which is also relevant is quoted below —

(2) Before making an order for striking off defence the court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or of the expiry of the week referred to in sub section (1) as the case may be

5 From a reading of sub-clause (1) of O XV R 5 of the Code of Civil Procedure it is clear that a discretion has been granted to the court to strike-off the defence It is (not') mandatory Even if there is a default, complete discretion has been left on the court to strike off the defence in spite of default considering the facts and circumstances of each case

6 Sub clause (2) further gives the right to a party whose defence is sought to be struck off to make a representation within 10 days of the first hearing or of the expiry of the week referred to in sub-section (1) as the case may be

7 In my opinion even if no representation is made under sub clause (2) of O XV R 5 still if on the record there are facts and circumstances which appear to the court to be such that the defence should not be struck off it is open to the court not to strike off the defence as the legislature has left this matter to the entire discretion of the court in which the suit is pending

8 Order XV Rule 5 of the Code of Civil Procedure came up for interpretation before the Hon ble Supreme Court in the case of Bimal Chand Jain v Gopal 1981 All CJ 395 AIR 1981 SC 1657 1981 All LJ 908 The Hon ble Supreme Court held as follows —

We must remember that an order under sub rule (1) striking off the defence is in the nature of penalty A serious responsibility rests on the court in the matter and the power is not to be exercised mechanically There is a reserve of discretion vested in the court entitling it not to strike off the defence if on the facts and circumstances already existing on the record it finds good reason for not doing so It will always be a matter for the judgment of the court to decide whether on the material before it notwithstanding the absence of a representation under sub-rule (2) the defence should or should not be struck off The word may in sub-rule (1) merely vests power in the court to strike off the defence It does not oblige it to do so in every case of default To that extent we are unable to agree with the view taken by the High Court in Puran Chand (1981 All LJ 82) (supra) We are of opinion that the High Court has placed an unduly narrow construction on the provisions of clause (1) of Rule 5 of Order XV

9 In the instant case in the order it has categorically been stated that the rent for the period 1st February 1976 to 31st March 1979 had been deposited on 13th February 1979 The suit in fact had been filed in the year

1977 There was therefore default in compliance with the provisions of O XV R 5 Code of Civil Procedure In spite of this default the trial court proceeded to hear the suit considered the defence of the applicant and thereafter passed a final judgment dated 29 11 1978 It is also apparent from the record that the trial court considered the defence of the applicant and it was thereafter that the decree for ejectment was not passed by the trial court and only a decree for arrears of rent had been passed Consequently by implication it has to be held that the trial court in fact exercised its discretion not to strike off the defence as required under O XV R 5 Code of Civil Procedure In the trial court no application was made by the plaintiff opposite party for striking off the defence No representation was either made under sub clause (2) of O XV R 5 by the applicant The matter came to this court in revision only against the decree for ejectment In this court also the question of striking off the defence of the applicant was neither raised nor considered by this court and in fact the matter was remanded to the court below for a decision on the question as to whether a decree for ejectment could be passed or not On the facts and circumstances of the case it is consequently apparent that the trial court before whom the suit was pending before passing the decree dated 29 11 1978 did not exercise the discretion to strike off the defence Now after remand the trial court has struck off the defence on default which had occurred prior to 29 11 1978 In my opinion the court below has misconstrued the power which was conferred upon it under O XV R 5 of the Code of Civil Procedure and has acted completely arbitrarily and unreasonably in the exercise of its discretion in striking off the defence when its predecessor who had passed the decree had impliedly on the basis of the facts and circumstances of the case did not strike off the defence The submission made by the learned counsel for the revisionist is accordingly well founded

10 It may however be pointed out here that since O XV R 5 of the Code of Civil Procedure provides for deposit of monthly rent also during the pendency of the suit it will be open to the plaintiff opposite party to raise an objection before the court below in case there is a fresh default in the payment of rent in accordance with the terms of O XV R 5

11 In the result the revision is allowed The order dated 7 5 1981 is set aside and the application (56 C) moved by the plaintiff opposite party is hereby rejected The court below shall now proceed to decide the case in accordance with the directions issued by this court in the judgment dated 17th April 1980 Since the suit is pending since 1977 it is in the interest of justice that the trial court will dispose of the case very expeditiously The parties are directed to bear their own costs

Revision allowed

1986 ALL L J 734

(LUCKNOW BENCH)

PARMESHWAR DAYAL J

Ram Lal *Petitioner* v Sheo Balak and others Respondents

Election Petn No 20 of 1985 D/ 18 10 1985

Representation of the People Act (43 of 1951), Ss. 86(1), 81(3) — Compliance of — Petitioner supplying incorrect and incomplete copy of election petition to elected candidate (respondent) and also not furnishing necessary copies of schedules, list of documents and affidavit which form part of petition — There is complete non-compliance of provisions of S 81(3) — Election petition is liable to be dismissed under S 86(1) Case law discussed. (Paras 12, 14)

Cases Referred	Chronological	Paras
(1985) Election Petn No 10 of 1985 D/ 24 5-1985 (All) Dr V C Misra v Dr Raj Kumar Sanjay Singh		16
AIR 1984 SC 305		13
AIR 1984 SC 956	(1984) 3 SCC 339	15
AIR 1954 SC 210		12

D N Singh Virendra Bhatia Kuldeep Singh M Afzal and P K Pushkar for Petitioner K C Sinha and V K Chaudhary for Respondents

---

CD/DD/B621/86/BNG/SNV

ORDER — In response to a notification dated 28 1 1985 under S 15 of the Representation of the People Act 1951 for general elections to the U P Assembly nominations were filed for a Constituency No 113 Salon (Scheduled Caste) of district Rae Bareilly After scrutiny 8 persons including the petitioner Ram Lal contested the election in that constituency The counting was done on 6 3 1985 and the respondent No 1 Sheo Balak was declared elected from that constituency He had secured 35 736 votes followed by the petitioner Ram Lal who secured 13 841 votes

2 Ram Lal filed the election petition on 20-4-1985 for declaring void the election of respondent No 1 from 113 Salon (Scheduled Caste) Constituency and for his declaration as an elected person He levelled the allegations of corrupt practices of giving bribe to the electors exercising undue influence canvassing on the ground of caste, hiring vehicles obtaining assistance of the gazetted officers in furtherance of the prospects of the election as the respondent No 1 held the office of Deputy Minister of Uttar Pradesh State Cabinet threatening the supporters and the another (voters?) of the petitioner capturing votes snatching away ballot papers from the Assistant Polling Officer incurring more expenditure than the authorised expenditure under the rules and so on

3 The respondent No 1 Sheo Balak instead of filing a written statement moved Civil Misc Application No 119(E) of 1985 praying for the dismissal of the election petition under S 86(1) of the Representation of the People Act (hereinafter to be called Act) He alleged in this application that he got the original file inspected through his counsel and was surprised to note that the copy served on him was not only incomplete copy but also did not contain any copy of the Schedules and the list of the documents and affidavit filed by the petitioner along with the original petition and that he failed to comply with the provisions of S 81(3) of the Act

4 The petitioner Ram Lal moved C M Application No 120 (E) of 1985 under S 151 C P C praying that he be permitted to furnish complete correct and true copy of the election petition to the respondent No 1 within reasonable time A counter affidavit has been filed along with this application and the same is claimed to be an objection to the C M Application No 119(E) of 1985 In this counter affidavit it has been averred that it was by the mistake of the clerk of his counsel that the copy of the election petition which was served on the respondent No 1 was incomplete since the copies of the annexures prepared at the time of filing the election petition were less than the number of respondents the copy was served on the respondent No 1 and that he is now ready to furnish the true complete and attested copies of the election petition to the respondent No 1

5 Thus it is admitted to the petitioner Ram Lal that a complete correct and true copy of the election petition was not served on the respondent No 1 That copy which was served on the respondent No 1 has been annexed with the C M Application No 119(E) of 1985 The page 11 of this annexed copy shows that the original petition contain paras 19 to 25 When this para 19 of the copy is compared with the original petition it is found to be para 3 at page 13 This way the paras 19 to 23 of the original petition are missing in the annexed copy In the original petition itself the serial number of the paragraph 23 has been repeated The page 12 of the copy contains the prayer and the prayer is typed and hand written at page 14 of the original petition In the copy the prayer No 1 is that the election of respondent No 1 be declared void and the prayer No 2 is that the petitioner be declared elected in place of respondent No 1 In the original the prayer No 1 is that the election of respondent No 1 from 113 Salon (Scheduled Caste) Constituency be declared void and the prayer No 2 is that the petitioner be declared elected in place of respondent No 1 from 113 Salon (Scheduled Caste) Constituency Thus the copy is not complete with regard to the clause of prayer also The original petition has been verified by the petitioner but in the copy the various contents which exist in the original petition are missing in the clause of verification Still this annexed copy has been verified by the petitioner as a true copy of the election petition

6 The petitioner filed 5 Schedules with his original election petition and they are numbered as pages 16 to 28 and 7 annexures have been

attached which are numbered as pages 29 to 43 A list of documents is mentioned at page 44 of the petition The affidavit accompanying the petition is numbered as pages 46 and A 2/47 The copies of all these 5 schedules 8 annexures the list of documents and the affidavit have not been furnished to the respondent No 1

7 In view of the aforesaid facts it has to be seen that if the petitioner may now be given an opportunity to fill this lacuna at this stage or else the petition is liable to be dismissed under S 86 (1) of the Act

8 Section 81(3) of the Act lays down that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition The word shall used in the sub section (3) of S 81 indicates that it is obligatory on the part of the petitioner to file the attested copies under his own signature with the election petition

9 The first proviso to S 83(1) of the Act lays down that where the petitioner alleges any corrupt practice the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof

10 Section 86(1) of the Act lays down that the High Court shall dismiss an election petition which does not comply with the provisions of S 81 or S 82 or S 117 and the Explanation qualifies that an order of High Court dismissing an election petition under this sub-section (1) shall be deemed to be an order made under clause (a) of S 98 The word shall used in S 86(1) also shows that it is mandatory to dismiss an election petition which does not comply with the provisions of S 81 or S 82 or S 117

11 In the instant case there has not been the compliance of the provisions of S 81(1)(3rd) of the Act as rightly argued by Sri S C Maheshwari, learned counsel of the respondent No 1

12. The petitioner s learned counsel contended that there has been a substantial compliance of law He relied on the case of Jagan Nath v Jaswant Singh (AIR 1954 SC 210) in which case it was held that non compliance with the provisions of the law relating to the impleading of parties viz S 82 is not necessarily fatal and can be cured Obviously this cited case has no bearing in the instant case where there has been non compliance of S 81 of the Act It cannot be said that he did the substantial compliance of the provisions of S 81 because he supplied an incorrect and incomplete copy to the respondent No 1 and he did not furnish the necessary copies of affidavit etc which form part of the election petition It can be called a complete non compliance of the provisions of S 81 of the Act

13 It was held in the case of Mithilesh Kumar Pandey v Baidyanath Yadav AIR 1984 SC 305 that before an election petition can be entertained the copies sent to the elected candidate must be a true copy failing which there would be serious disobedience of the mandate contained in S 81(1) which may be fatal to the maintainability of the said petition It was further observed that to determine the question of non compliance of S 81 (3) the following principles are well established

Every petition shall be accompanied by as many copies thereof as there are respondents in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition

14 In view of the above the election petition was held liable to be dismissed in limine

15 It was further held in the case of J P Goyal v Raj Naram and in the case of Bishambhar Nath Pande v Raj Naram (1984) 3 SCC 339 (AIR 1984 SC 956) that if an election petitioner files a number of copies some of which may be correct and some may be incorrect it is his duty to see that the copies served on the respondent is a correct one and that the respondent is not obliged to wade through the entire record in order to find out which is the correct copy It was further held that if out of the copies filed the respondent s copy is found to be an incorrect one it amounts to non compliance of S 81(3) which is sufficient to entail dismissal of the election petition at the behest under S 86

16 The respondent No 1 referred to the case of Dr V C Misra v Dr Raj Kumar Sanjay Singh decided by this Court on 24-5 1985 in Election Petition No 10 of 1985 where a notice was not even issued and the petition was dismissed in limine for non compliance of the provisions of S 81(3) of the Act

17 Therefore this is not the stage for permitting the petitioner to cure the defects and the C M Application No 119(E) of 1985 is allowed and the objections and reply vide C M Application No 120(E) of 1985 are dismissed This Election Petition No 20 of 1985 is also dismissed in limine with costs to the respondent No 1 which are assessed at Rs 2000/ The costs shall be paid out of the security money Other respondents shall bear their own costs

18 Substance of this judgment shall be sent forwith to the Election Commission and the Hon ble Speaker of the Uttar Pradesh State Legislative Assembly Certified copies of the judgment shall be expeditiously sent to the Election Commission in duplicate

Petition dismissed

1986 ALL L J 737

N N SHARMA J

Aslam and others Petitioners v State of U P and another Respondents

Criminal Revn Nos 2432 and 2433 of 1984 D/ 26-7 1985

(A) Criminal P C (2 of 1974), S 397(2) — Accused charged under Ss. 323, 325, 308, Penal Code — Dropping of proceedings under S 308, Penal Code by Magistrate — Order of Magistrate amounts to usurping the jurisdiction of Sessions Judge — Order is revisable — (Penal Code (45 of 1860), Ss 325, 323 and 308) (Para 9)

(B) Criminal P C (2 of 1974), S 401 — Revision — Order by Magistrate dropping proceedings under S 308, IPC — Sessions Judge setting it aside and framing charge on basis of material before him under S 307, IPC against Accused — Order of Sessions Judge not liable to be interfered in revision

The charge sheet submitted by the police under Ss 323/324/325/308 of I P C and Column No 5 of the charge-sheet showed that after the investigation the case was found relating to offence under Ss 323/324/308 of I P C However subsequently on the statement of the investigator the Magistrate dropped the proceedings under S 308 IPC as the charge-sheet as to that offence was submitted by mistake In revision against the order of the Magistrate the Sessions Judge found that a prima facie case under S 307 IPC was made out against the accused and so he charged him accordingly and set aside the order of the Magistrate Held the order passed by Sessions Judge could not be interfered in revision

(Para 19)

Cases Referred	Chronological	Para
1984 All LJ 723	(1984) 2 Crimes 309	13
1983 All LJ 419	AIR 1983 SC 439	1983 Cri LJ 839 14
1981 Cri LJ 1819 (Bom)		18
AIR 1978 SC 514		17

Jejpal for Petitioners A G A Subodh Kumar and H P Tripathi for Respondents

ORDER — Both these revisions are connected and are being disposed of by this order

1A Criminal Revision No 2432 of 1984 is directed against order dt 6-10-1982 recorded by Sri S B L Kakkar learned Sessions Judge Saharanpur by which he allowed Criminal Revision No 101 of 1982 and set aside the order of learned Magistrate dt 30-3-1982 to proceed with the trial of the case himself as a warrant case under Ss 323/324/325 IPC by dropping Section 308 I P C In pursuance of the order of revisional court the learned Magistrate committed the case to the Court of Session Learned Sessions Judge framed a charge under S 307 I P C against the revisionists on 7 6-1984 This charge along with the order was assailed on behalf of accused revisionists in Criminal Misc Application No 5271 of 1984 under S 482 Cr P C That application was rejected on 13-11 1984

2 Criminal Revision No 2433 of 1984 is directed against that order dt 7-6-1984 recorded by Sri K K Srivastava learned Additional Sessions Judge Saharanpur who framed the charge against the accused under

S 307 IPC in Sessions Trial No 146 of 1983 State v Rustam and others

3 One Ashique Hussain lodged a report against accused at Police Station Jwalapur district Saharanpur on 28 11 1980 at 7 45 P M about the assault on Mohd Saddique and Mushtaque with lathis and spear Accused Baqer was alleged to have used spear while the remaining assailants used lathis

4 Mohd Saddique and Mushtaque were medically examined on the same day X ray examination of one injured was also done

5 On 12 12 1980 charge sheet was submitted by investigator Sri Jai Prakash under Ss 323 325 and 300 IPC Pending the case before the Magistrate an application was moved by accused on 30-11 1983 by which the investigator was summoned to state that it was on account of mistake that a charge-sheet had been submitted for an offence under S 308 IPC also An extract from the case diary was also filed by the investigator on that date in support of his statement

6 After this statement learned Magistrate dropped the proceedings under S 308 IPC vide order dt 30-3-1982

7 Complainant carried the matter in revision which was allowed as given above

8. I have heared learned counsel for parties and perused the record

9 On behalf of revisionists it was argued that order dt 30-3-1982 by learned Magistrate was simply an interlocutory order and no revision against the said order could have lain vide section 397(2) of Cr P C This contention is not acceptable to me for the simple reason that when the Sessions Judge found that the Magistrate recorded an order to usurp the jurisdiction of Sessions Judge so the order was clearly revisable

10. The next contention was that it was not open to a private party to prefer a revision when the proceedings were initiated on a police report. This contention is also not weighty The Sessions Judge could have acted suo motu in calling and examining any record of any proceedings pending before any inferior criminal Court situate within its or his local jurisdiction for the purpose of satisfying the correctness, legality or propriety of any finding sentence or order recorded or passed So the learned Sessions Judge was well within his right to have examined the record and corrected the error apparent on the face of record.

11 The next contention was that the learned Magistrate was justified in examining the investigator and such examination was not legal Charge-sheet was submitted under Ss 323/324/325 IPC Secton 308 IPC was added subsequently It was open to the investigator to clarify the same Learned Magistrate also could have ascertained this fact from the investigator

12. Even at the stage of enquiry in the interest of justice, in exercise of this power under S 311 Cr P C a witness could have been examined by the Magistrate So while acting under S 209 Cr P C the learned Magistrate could have applied his judicial mind to see as to whether it was a case exclusively triable by the Court of Session or not? So the Magistrate has not committed any illegality in examining the investigator

13 In this connection reliance was placed upon Shobha Nath Chela Baba Itwari Nath v Acchu Ram reported in (1984) 2 Crimes 309 (1984 All LJ 723) In that case the proceedings were initiated on a complaint by revisionist against one Acchu Ram under Ss 395/397 IPC After recording the statements of complainant and other witnesses the learned Magistrate found that as the offence under S 395 IPC could not be committed by a single individual, as was the case of complainant, so the accused was to be discharged So the case was returned by Munsif Magistrate to the Magistrate concerned for passing appropriate orders That order was upheld in revision despite the limited scope of enquiry under S 209 Cr P C

14 It was further argued that in order to ascertain his jurisdiction to take cognizance of the offence learned Magistrate would have examined investigator also in exercise of his power under S 209 Code of Criminal Procedure Learned Magistrate had power to release the accused on bail also after submission of the charge-sheet and before passing the committal order vide State of U P v Lakshmi Brahman reported in AIR 1983 SC 439 (1983 All LJ 419)

15 I have carefully considered these contentions Section 209 of Code of Criminal Procedure reads as below

209 Commitment of case to Court of Session when offence is triable exclusively by it — When in a case instituted on a police report or otherwise the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session he shall —

(a) Commit after complying with the provisions of Section 207 or Section 208 as the case may be, the case to the Court of Session and subject to the provisions of this Code relating to bail remand the accused to custody until such commitment has been made —

Uttar Pradesh — for clauses (a) and (b) the following clauses shall be substituted and be deemed always to have been substituted namely —

(a) as soon as may be after complying with the provisions of Section 207 commit the case to the Court of Session

(b) subject to the provisions of this Code relating to bail, remand the accused to custody until commitment of the case under Clause (a) and thereafter during and until the conclusion of trial — U P Act No 16 of 1976 S 6

16 In a criminal proceeding there are three stages viz

(i) investigation

(ii) enquiry and

(iii) trial

In these revisions we are not concerned with the proceedings for investigation conducted by the police under Chapter XII of Code of Criminal Procedure

17 As regards the enquiry and trial which are the stages of proceedings before the criminal Courts, Chapter XVIII of the old Code of Criminal Procedure which related to the committal proceedings has been done away with and new provisions have been made in the new Code of Criminal Procedure which has practically abolished the committal proceedings in cases initiated on the police report Cases initiated on a complaint relating to the offence exclusively triable by Sessions Judge may be enquired into under Ss 200 and 202 of Code of Criminal Procedure In cases initiated on police reports, copies of relevant documents are to be supplied to the accused and as soon as the accused appeared or was brought before the Magistrate and it appears to the Magistrate that the offence is exclusively triable by a Court of Session he has to commit the case after complying with the provisions of Section 207 of Code of Criminal Procedure If it is not a case initiated on a police report, he may observe the rule incorporated in Section 208 of Cr P C in complaint case etc No further delay is to be done as is obvious from the amendment aforesaid introduced in U P The discretion of Magistrate is limited to the perusal of record His judicial discretion is circumscribed by limitation and restriction just like a peep through a pin hole The scope of the exercise of that discretion was pointed out by the Supreme Court in Sanjay Gandhi v Union of India, reported in AIR 1978 SC 514 in the following words —

In our view the narrow inspection hole through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Session If by error a wrong section of the Penal Code is quoted he may look into that aspect

18 A similar question came up for consideration before the Bombay High Court in Dr D Samant v State of Maharashtra reported in 1981 Cr L J 1819 It was observed

The employment of the word appears is pregnant with all these inevitable inferences which in turn negative a deeper probe involving the process of appreciation of finer shades In effect, therefore on a plain reading of the material on record which impliedly excludes appreciation of finer shades involving of deeper probe as at the full dressed trial if it appears to the judicial mind of the Magistrate that there exists an offence triable exclusively by a Sessions Court or on such plain reading such an offence is prima facie or on the face of the record is disclosed then he has no option but to commit the case to the Court of Session

19 I respectfully agree with these

observations The charge-sheet submitted by the police was under Ss 323/324/325/308 IPC, Column No 5 of the charge-sheet shows that after the investigation the case was found relating to offence under Ss. 323/324/308 IPC So addition of S 308 IPC, which offence is exclusively triable by a Court of Session was not merely an omission by investigator as he tried in vain to explain in his statement recorded by Magistrate on the application submitted by accused It appears that the investigator adopted a shifting stand Learned Sessions Judge found that a prima facie case under S 307 IPC was made out against the revisionists and so he charged them accordingly Under such circumstances on the evidence on record, no interference by this Court is needed in exercise of the revisional jurisdiction It is not for the investigator to determine the nature of the offence and override the discretion of the Magistrate or the Sessions Judge

20. In the result the revisions fail and are dismissed as devoid of force Both the impugned orders are upheld

21 Since these proceedings are pending for so many years let the trial be expedited now

22 Send the record to the Sessions Court forthwith

23 Interim orders dt. 25-1 1985 and 19 2 1985 are vacated herewith

Revision dismissed

1986 ALL. L. J 740

(SUPREME COURT)

(From Allahabad)*

A P SEN B C RAY AND K N SINGH JJ

Civil Appeal No 959 of 1986 D/ 10 3 1986

Om Prakash Appellant v Bhagwan Das Respondent

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 21(1)(a) — Eviction — Bona fide need — Comparative hardship — Finding by Prescribed Authority that refusal of application for eviction of tenant would cause greater hardship to landlord — Landlord also offering alternative accommodation to tenant and fulfilling requirement of 4th Proviso to S 21(1)(a) — Landlord entitled to recovery of possession C.M.W.P.No 11377 of 1980, D/ 1 5-1985 (All), Reversed (U P Urban Buildings (Regulation of Letting, Rent and Eviction) Rules (1972), R. 16(1)(f))

Where the Prescribed Authority and the Additional District Judge both after considering the comparative hardship likely to be caused to the tenant and the landlord recorded a finding that on the refusal of the application for eviction of tenant, the landlord would be put to greater hardship and it could not be said that the landlord had not fulfilled the requirement of the 4th Proviso to S 21(1)(a) of the Act as he had made an offer to the tenant that the rented premises in his occupation may be given to the tenant in exchange the landlord is entitled to recovery of possession of the premises. C M W P 11377 of 1980 D/ 1 5 1985 (All) Reversed

(Para 4)

Cases Referred Chronological Paras

AIR 1981 SC 1690 (1981) 3 SCC 502 2
(1947) 1 All ER 164 176 LT 300 63 TLR 84 Chandler v Strevett 2
(1947) 1 All ER 810 91 Sol Jo 304 Kelley v Goodwin 2
(1946) 2 All ER 261 62 TLR 485 90 Sol Jo 570 Sims v Wilson 2
(1946) 2 All ER 668 62 TLR 711 (1947) KB 242 Fowle v Bell 2
(1946) 2 All ER 672 62 TLR 750 91 Sol Jo 54 Smith v Penny 2

Mr R B Mehrotra Advocate for Appellant Mr Sunil Ambwani and Mr Mukul Mudgal Advocate for Respondent

SEN, J — After hearing learned counsel for the parties, we are satisfied that the High Court, in the facts and circumstances of the case was clearly in error in interfering with the order passed by the Prescribed Authority Varanasi and that of the II Additional District Judge Varanasi by which they allowed the application made by the appellant under S 21(1)(a) of the U P Urban Buildings

---

*C M W P No 11377 of 1980 D/ 1 5 1985 (All)

(Regulation of Letting Rent and Eviction) Act 1972 Although the Authorities on a consideration of the evidence came to the conclusion that the need of the landlord was bona fide and he was entitled to the release of the demised premises under S 21(1)(a) of the Act Admittedly the appellant and the respondent are displaced persons and the Authorities held that since the appellant was living in rented premises there was no reason why he should be deprived of the beneficial enjoyment of his own property

2 In Bhaichand Ratanshi v Laxmishanker Tribhovan (1981) 3 SCC 502 (AIR 1981 SC 1690) this Court interpreting the analogous provisions in S 13(1)(g) of the Bombay Rents Hotel and Lodging House Rates Control Act 1947 observed

The Legislature by enacting Section 13(2) of the Act seems to strike a just balance between the landlord and the tenant so that the order of eviction under Section 13(1)(g) of the Act does not cause any hardship to either side The considerations that weigh in striking a just balance between the landlord and the tenant were indicated in a series of decisions of the Court of Appeal, interpreting an analogous provision of the Rent and Mortgage Interest Restrictions (Amendment) Act 1933 (c 32) Section 3(1) Schedule I para (h) Sims v Wilson (1946) 2 All ER 261 Fowle v Bell (1946) 2 All ER 668 Smith v Penny (1946) 2 All ER 672 Chandler v Strevett (1947) 1 All ER 164 and Kelley v Goodwin (1947) 1 All ER 810 One of the most important factors in considering the question of greater hardship is whether other reasonable accommodation is available to the landlord or the tenant. The Court would have to put in the scale other circumstances which would tilt the balance of hardship on either side including financial means available to them for securing alternative accommodation either by purchase or by hiring one the nature and extent of the business or other requirement of residential accommodation as the case may be It must however be observed that the existence of alternative accommodation on both sides is an important but not a decisive factor On the issue of greater hardship the English Courts have uniformly laid down that the burden of proof is on the tenant. We are inclined to the view that on the terms of Section 13(2) of the Act the decision cannot turn on mere burden of proof but both the parties must lead evidence The question whether or not there would be greater hardship caused to the tenant by passing the decree must necessarily depend on facts and circumstances of each case

3 A plain reading of S 21(1)(a) of the Act read with the 4th Proviso thereto and R 16(1)(f) shows that the scheme under the Act is the same One of the factors prescribed by R 16(1)(f) is that if the landlord applies for ejectment of the tenant on the ground that the accommodation is bona fide required by him for his use and the members of his family and if the landlord offers reasonably suitable accommodation to the tenant for the needs of his family the landlord s claim for eviction shall be considered liberally In the present case the Prescribed Authority and the II Additional District Judge both after considering the comparative hardship likely to be caused to the tenant and the landlord recorded a finding that on the refusal of the application the landlord would be put to greater hardship

4 There was no infirmity in the order of the Prescribed Authority or that of the learned II Additional District Judge The refusal of the application of the landlord under S 21(1)(a) of the Act would undoubtedly cause greater hardship to him as that would deprive of his beneficial enjoyment of his own property In such a case it could not be said that the landlord had not fulfilled the requirement of the 4th Proviso to S 21(1)(a) of the Act The High Court obviously committed an error in interfering with the findings of the Prescribed Authority and the learned II Additional District Judge on the ground that the landlord had failed to fulfil the requirements of the 4th Proviso to S 21(1)(a) of the Act

5 We wish to record that Shri R B Mehrotra learned counsel for the appellant made an offer that the rented premises in occupation of the appellant may be given to the respondent who is his tenant in exchange We think that this was a very reasonable offer and should be accepted Shri Sunil Ambwani learned counsel appearing for the respondent stated that the respondent was not agreeable to his proposal We therefore heard the parties on merits

6. In the view that we take the appeal must succeed and is allowed. We set aside the judgment and order of the High Court and restore that of the Prescribed Authority Varanasi and that of the II Additional District Judge Varanasi directing the release of the accommodation under S 21(1)(a) of the Act. We direct that the Prescribed Authority Varanasi shall on an application being made by the parties allot the rented premises occupied by the appellant in favour of the respondent with the consent of the landlord If no such consent is forthcoming the Prescribed Authority shall allot a reasonably suitable alternative accommodation to the respondent for his occupation on such terms as he may deem fit

7 We further direct that the order of eviction shall not be executed for six months in the event the respondent furnishes usual undertaking within four weeks from today Both the parties shall, in the meantime, move to the Prescribed Authority Varanasi for permission to exchange their respective premises on the terms set out above

8. No costs.

Appeal allowed

1986 ALL. L J 742

(LUCKNOW BENCH)

S SAGHIR AHMAD AND BRIJESH KUMAR JJ

Master Mantoo Petitioner v Ajeet Kumar Sinha and others, Respondents

Habeas Corpus Writ Petn No 1452 of 1985 D/ 24-5 1985

Hindu Minority and Guardianship Act (32 of 1956), Ss. 4, 6 — Mother of child filing writ petition claiming his custody — Father taking away child when he was ten months old — Petition filed four years thereafter — Civil and Criminal proceedings initiated in meanwhile allowed to be dropped — High Court would not grant custody of child to mother, more so, in writ jurisdiction (Constitution of India, Art. 226)

Where a petition for a writ of habeas corpus was filed by mother for the custody of her child of about five years when admittedly she was taken away by his father when he was ten months old and civil and criminal proceedings initiated in the meanwhile against the father were allowed to be dismissed and there was no allegation in the petition that the child was not properly looked after by his father or that he was not receiving proper education the High Court would not grant the custody of the minor child to his mother at least in writ proceedings AIR 1982 Madh Pra 81 Rel on (Para 16)

Cases Referred	Chronological	Paras
AIR 1982 Madh Pra 81		14
AIR 1971 Mys 69		11
AIR 1969 Delhi 283		11

S C Srivastava, for Petitioner Chief Standing Counsel for Respondents

S SAGHIR AHMAD, J. — This is a petition in the nature of habeas corpus under Art 226 of the Constitution

2. The facts of the case may first be stated in brief

3. Smt Madhubala Srivastava, who is employed as a Typist in the Vidhan Sabha Sachivalaya, Lucknow was married to opposite party No 1 Ajeet Kumar Sinha on 19 2 79

4 A son born to them on 22 7-80 in the Dufferin Hospital, Lucknow Smt. Madhubala Srivastava and Ajeet Kumar Sinha lived together at the latter s house up to 22 5-81 whereafter Smt Madhubala Srivastava on account of relations having become strained, shifted to her parents house at Bareilly taking the infant child with her Ajeet Kumar Sinha and his parents visited Madhubala Srivastava at Bareilly on 30-5 81 for a compromise It is stated that when Smt Madhubala Srivastava had been called inside by her mother Sinha picked up the baby i e Master Mantoo who is petitioner in this case and left the place It is further stated that opposite party No 1 and his family members were approached for the return of the child but they denied that the child was in their custody On 5 9-81 an FIR was lodged against the opposite parties under Ss 363 and 365 I P C A search warrant was also issued but Master Mantoo could not be

recovered Smt Madhubala Srivastava had to give up the pairvi of the case under Section 363/365 I P C on account of the threats held out to her Her father who was also doing the pairvi of the case was assaulted on 25 5 82 A case was also filed by Smt Madhubala Srivastava under the Guardians and Wards Act for the custody of the child but the case was also dropped by her on account of the threats held out to her and because she had come to know in the meantime, that the child had been placed in the custody of somebody else. She recently came to know that the child was living with the opposite parties at their house No 224 Arya Nagar P S Naka Hindola, Lucknow and, therefore this petition in the nature of habeas corpus has been filed for the custody of that child It is stated that opposite party No 1 who was in private service has since been removed from service while Smt Madhubala was earning more than Rs 700/ per month and was therefore, in a better position to educate the child and to look after him

5 It is not disputed that Master Mantoo has been living with his father since the time of his infancy Admittedly when the child was only few days old the father (Ajeet Kumar Sinha) is said to have brought him at his place It is also not disputed that the proceedings under S 363/365 I P C which were initiated by Smt. Madhubala Srivastava have since been dropped The petition filed under the provisionsof Guardians and Wards Act has also been dropped As a matter of fact, as stated by the learned counsel for the petitioner the petition under the Guardians and Wards Act has been dismissed in default.

6 It is also not disputed by Smt Madhubala Srivastava that Ajeet Kumar Sinha has since filed a divorce petition under the Hindu Marriage Act against her and that case (Reg Suit No 163 of 84) is pending in the Court of Civil Judge Lucknow

7 It is in the above circumstances that the question of maintainability of the present petition has to be examined

8. Section 4 of the Hindu Minority and Guardianship Act 1956 (for short, Guardianship Act) defines word guardian in Cl (b) as under

'4 (a)

(b) guardian means a person having the care of the person of a minor or of his property or of the both his person and property and includes —

(i) a natural guardian

(ii) a guardian appointed by the will of the minor s father or mother

(iii) a guardian appointed or declared by a Court and

(iv) a person empowered to act as such by or under any enactment relating to any Court of wards

Natural guardian has been defined in S 4(c) It provides that natural guardian means any of the guardians mentioned in S 6'

9 Section 6 is in the following terms

6 The natural guardians of a Hindu minor in respect of the minor s person as well as in respect of the minor s property (excluding his or her undivided interest in joint family property) are —

(a) in the case of a boy or an unmarried girl the father and after him the mother provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother

(b) in the case of an illegitimate boy or an illegitimate unmarried girl — the mother and after her the father

(c) in the case of a married girl — the husband provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section —

(a) if he has ceased to be a Hindu or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaparastha) or an ascetic (yati or sanyasi)

Explanation In this section, the expression father and mother do not include a step-father and a step mother

10 Section 6 indicates that natural guardian of a boy or an unmarried girl is the father after him, the mother There is specific provision made in respect of a minor who has not completed the age of five years. It is provided that the custody of such minor shall ordinarily be with the mother i e even if father is alive and is, in all respects, fit to act as guardian, the custody of his child who has not

completed the age of five years shall be with the mother The legislature appears to be conscious of the fact that for an infant the warmth of mother s body was more important than the care of his father A child learns to live in the lap of his mother He builds up his future in his mother s lap Ordinarily therefore the mother is to have the custody of the child who has not completed the age of five years It is important to note that mother s right to custody of child who has not completed the age of five years is qualified by the words ordinarily which clearly suggests that in appropriate cases the mother can be refused the custody of the minor the paramount consideration in such cases being the welfare of interest of the minor

11 In Smt Chander Prabha v Prem Nath Kapoor AIR 1969 Delhi 283 the custody of the minor who had not completed the age of five years was given to the mother in accordance with the provisions of S 6 of the Guardianship Act. In Smt Radhabai v Surendra K. Mudaliar AIR 1971 Mys 69 it was laid down that child s welfare was the primary factor and, therefore unless there were special circumstances under S 6 of the Guardianship Act the custody of the child is to remain with the mother

12 In view of the above, what is to be seen in the instant case is whether there are special circumstances was (sic) justify the childs with the father

13 It will be noticed that the child was born at Lucknow on 22 7 80 Smt. Madhubala Srivastava left her husband s place on 22 5-81 i e when the child was hardly ten months old. A week later however the child is said to have been brought back by Ajeet Kumar Sinha to his house. The legal machinery was sought to be moved for the first time on 5 9-81 when an FIR was lodged under S 363/365 I P C against Ajeet Kumar Sinha and his near relations We do not know what action was taken in the criminal proceedings but from the pleadings contained in the writ petition it appears that the child for whose recovery a search warrant was also issued was not recovered from his father s house The petition filed under the Guardians and Wards Act for the custody of the child was allowed to be dismissed in default. This happened, as the learned counsel for the petitioner says sometime in 1983 Thereafter a divorce petition (Reg Suit No 163 of 84) is said to have been filed by Ajeet Kumar Sinha against Smt Madhubala Srivastava. The suit is being hotly contested by Smt Madhubala Srivastava. In that suit, although she has moved an application under S 24 of the Hindu Marriage Act for payment of alimony she has not filed any application under S 26 for the interim custody of the child A copy of the plaint was placed before us by the learned counsel for the petitioner in which one of the grounds raised on behalf of Ajeet Kumar Sinha is that Smt Madhubala Srivastava had deserted him and his son Master Mantoo It is not disputed that desertion can constitute a valid ground for divorce under the Hindu Marriage Act The question whether Smt Madhubala Srivastava had actually deserted Ajeet Kumar Sinha or her child Master Mantoo is a question of fact which is receiving the attention of the trial Court in Reg Suit No 163 of 1984 The fact remains that the child had all along been in the custody of his father Ajeet Kumar Sinha since 1981 Ajeet Kumar Sinha has thus brought up the child since the child was hardly ten months of age The age of the child has been described in the memo of the petition as four years If the child has been living with his father for the last 3½ years, it would not be in the welfare and in the interest of the minor to place him in the custody of someone else or for that matter his natural mother Smt Madhubala Srivastava

14 A Division Bench of the Madhya Pradesh High Court in Smt Renu Vaid v Ravi Vaid, AIR 1982 Madh Pra 81 has laid down as under

In matter relating to the custody of minor it is well settled that the paramount consideration is the welfare of the minor and not legal right of this or that party The proviso to Section 6(a) of the Hindu Minority and Guardianship Act 1956 also raises a strong presumption that mother s protection for a child of tender age is indisputable There may however be circumstances in a particular case which rebut this presumption and in such a case welfare of the minor although of tender age lies in giving custody to the father

15 The habeas corpus petition for the custody of the child in the above Madhya Pradesh case was filed by the mother three

years after she had left her matrimonial home leaving her 11 months old child in the custody of his father Since then the child had continuously been living with his father and had eventually stopped recognising his mother It was in those circumstances held by the Madhya Pradesh High Court that father should continue the custody of the child as the handing over of the child to the mother would create many problems and the child will feel miserable in the mother s company until he starts recognising her as his mother

16. In the instant case the child has been living with his father since he was of the age of ten months As noticed earlier even the proceedings were initiated for the custody of the child after a considerable lapse of time The child admittedly, was taken away by his father in 1981 but the present petition has been moved in 1985 i e after about four years although Civil and Criminal proceedings which were initiated in the meantime were allowed to be dismissed There is no allegation in the petition that the child is not being looked after by his father or that he is not receiving proper education In this view of the matter in spite of the fact that Smt Madhubala Srivastava is the natural mother, the custody of the child cannot be given to her at least in the present proceedings. She may if so advised, file appropriate application in the civil suit arising out of divorce petition

17 In view of the above the petition is dismissed

Petition dismissed

1986 ALL. L. J 745

(LUCKNOW BENCH)

D N JHA J

Smt Shanti Ojha and others Petitioners v Smt Sachi Kumari Mishra Respondent.

Writ Petn No 6390 of 1983 D/ 16 10 1985

(A) U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), Ss 21, 3(k), 9 — Suit for ejectment on ground of default in payment of rent and arrears of rent — Tenant entering into possession of first floor on its being offered as alternative accommodation by landlady who wanted ground floor — He, however, paying paltry amount as rent and denying liability to pay rent at rate paid by earlier occupant — Assessment of building made — Tenant liable to pay assessed letting value of building as rent — Failure to pay that made him defaulter (Para 5)

(B) Provincial Small Cause Courts Act (9 of 1887), S 25 — Power of revisional Court to sift evidence — Trial Court disposing of principal question of non payment of rent under a total misconception of law — Revisional Court is entitled to sift evidence and arrive at correct finding 1984 All LJ 379 (SC), Rel on (Para 6)

Cases Referred Chronological Paras

1984 All LJ 379 (1984) 1 All Rent Cas 679
AIR 1984 SC 1447 6

P Kant, R K Srivastava and Madhukant, for Petitioners M K Seth C K Seth B N Agarwal and S K Kalia for Respondent.

ORDER — This writ petition has been directed against the order dated 19 10 1983 passed by the Vth Additional District Judge Lucknow allowing the revision preferred by opposite party

2. The dispute relates to House No 501/61 situate in Umrao Bahadur Road Hasanganj Lucknow The opposite party Smt Sachi Kumari Mishra is admittedly the landlady The tenant was Dr K. C Ojha Dr Ojha was in occupation of the ground floor on a monthly rent of Rs 130/ while the first floor was occupied by Dr A N Dwivedi on a monthly rent of Rs. 175/ The first floor of the house was got vacated by the landlady through an application made under S 21 of the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 (hereinafter referred to as the Act) The landlady being old wanted the ground floor and it is alleged that before the Prescribed Authority the alternative accommodation was offered by the landlady to Dr K C Ojha. Dr K C Ojha in pursuance of the order passed by the Prescribed Authority entered into possession over the first floor from the ground floor and the ground floor was occupied by the landlady on 25th March 1977 It may be mentioned that quantum of

rent was not determined by the Prescribed Authority However Dr Ojha tendered the rent at the rate of Rs 10/ per month which was obviously a ridiculous amount and was refused by the landlady After a lapse of few months, the landlady served a notice for arrears of rent and ejectment and thereafter she filed a suit in the court of Judge Small Causes The learned Judge Small Causes held that the defendant was not liable to pay Rs 175/ per month as rent as the Prescribed Authority by allotment order had directed the parties to get the standard rent fixed The parties did not get the standard rent fixed hence the plaintiff was not entitled to claim rent at the rate of Rs 175/ per month He further held that the defendant cannot be held as defaulter of rent On these findings he dismissed the suit The respondent landlady went up in the revision and the said revision has been allowed This is how this petition is before this Court under Art 226 of the Constitution

3 I have heard the learned counsel for the parties and gone through the averments and cross averments made by the contesting parties Learned counsel for the petitioner urged that since no standard rent was fixed therefore there was no agreed rent and the suit for ejectment could not be decreed on the ground that petitioner had defaulted in paying the arrears of rent I am not impressed by this argument The standard rent has been defined in S 3(k) of the Act which reads as under —

3(k) Standard rent subject to the provisions of sections 6 8 and 10 means —

(i) in the case of a building governed by the old Act and let out at the time of the commencement of this Act —

(a) where there is both an agreed rent payable therefor at such commencement as well as a reasonable annual rent which in this Act has the same meaning as in section 2(f) of the old Act reproduced in the Schedule the agreed rent of the reasonable annual rent plus 25 per cent thereon whichever is greater

(b) where there is no agreed rent but there is a reasonable annual rent, the reasonable rent plus 25 per cent thereon

(c) where there is neither agreed rent nor reasonable annual rent the rent as determined under section 9

(ii) in any other case the assessed letting value for the time being in force and in the absence of assessment the rent determined under Section 9

It has been admitted that there was a fixed assessment of the house It is also admitted that the assessed rent had also not been paid by Dr Ojha It may be mentioned that during the trial Dr Ojha died and his heirs stepped into the shoes S 3(f) defines assessment as under —

(f) assessment in relation to a building means the assessment or proportionate assessment as the case may be of the letting value thereof by the local authority having jurisdiction and assessed shall be construed accordingly

4 It may be mentioned that a tenant is bound to pay the rent for the use and occupation of the premises Learned counsel for the petitioner could not satisfy me as to how the rent of Rs 10/ was tendered which was previously occupied on a rent of Rs 175/ per month The learned revisional court took real pains and adjudicated the dispute In my opinion there was no error in determining the rent as Rs 175/ which was to be paid by the petitioner

5 Learned counsel invited my attention to the order passed by the Prescribed Authority and urged that the rent was disputed by Dr Ojha and the authorities had left the question open I have perused the order dated 14-10-1976 passed by the Prescribed Authority and I find that there is a clear cut observation by the Prescribed Authority that what should be the rent of the premises is not to be adjudicated at this stage of application for release of an accommodation There is nothing in the order from which it can be inferred that it was for the landlord to get the rent fixed or determined by some competent authority The standard rent has already been defined above and liability to pay the same was there If this building had not been assessed probably a case could have been made out by the petitioner but unfortunately in the instant case assessment of the building had been made and hence the liability was there on the tenant to pay the same to the landlord This argument also finds support from S 9 which relates to determination of standard rent Sub-section (1) of S 9 of the Act reads as under —

In the case of a building to which the old Act was applicable and which is let out at the time of the commencement of this Act in respect of which there is neither any reasonable annual rent nor any agreed rent or in any other case where there is neither any agreed rent nor any assessment in force the District Magistrate shall on an application being made in that behalf determine the standard rent

Learned counsel for the petitioner could not point out that the case of the petitioner fell within the ambit of determination of standard rent In this view of the matter the submission advanced by the learned counsel for the petitioner is totally devoid of merit

6 It was also contended that the learned Additional District Judge while hearing the revision could not sift the evidence This argument also in view of decision of the Supreme Court does not stand to reason There are cases in which the revisional court can sift the evidence if the Judge Small Causes has failed to look into the evidence on record It may be mentioned that the Supreme Court in Jagdish Prasad v Angoori Devi (1984) All Rent Cas 679 (1984 All LJ 379) has laid down a proposition that in certain circumstances the revisional court is entitled to sift the evidence particularly where the trial court laboured under misconception of law In the instant case the principal question of non payment of rent was disposed of by the Judge Small Causes under a total misconception of law The view therefore taken by the revisional court is correct and in accordance with law

7 Lastly it was urged that there is paucity of accommodation in the city of Lucknow and therefore sometime may be allowed to the petitioner to find out an alternative accommodation The time has already been granted from time to time but still in view of the acute shortage of accommodation I accept the prayer for sometime to vacate the premises as requested on behalf of the petitioners I therefore allow time to the petitioners to vacate the premises on or before 31st December 1985 on the condition that they will regularly keep on paying damages at the rate of Rs 175/ per month for the use and occupation of the premises Secondly they will not cause any damage to the property In the event of default of any of these conditions it will be open to the respondents to execute the decree If the petitioners fail to vacate the premises on or before 31st December 1985 the Judge Small Causes will evict the petitioner and put the respondent into possession by such force as is necessary

8 In view of aforesaid discussion there is no merit in this petition which is accordingly dismissed but the petitioners are allowed to continue to stay in the premises till 31st December 1985 on terms and conditions mentioned above

Petition dismissed

1986 ALL L J 747

H N SETH Actg C J AND
J N DUBEY J

Shish Ram Petitioner v Assistant Registrar of Co-operative Societies and others Respondents

Civil Misc Writ Petn Nos 3643 to 3646 of 1976 D/ 18 11 1985

U.P Co-operative Societies Act (11 of 1966), S 70 — Reference to Arbitrator — Dispute as to whether debtors were liable to pay amount claimed by society — Arbitrator cannot pass order for recovery of amount from cashier of society to whom debtors had alleged to have paid back loan

An Arbitrator under S 70 of the Co operative Societies Act is entitled to decide only such dispute as is referred to him under the provisions of the Act In the instant case the only dispute which was referred to the Arbitrator was whether or not the debtors were liable to pay the amount claimed by the Co-operative Society to it The controversy whether or not the liability for the said amount rested with the cashier of the Society to whom the debtors alleged to have paid back the loan was not referred to the Arbitrator Held that in the circumstances it was not within the domain either of the Arbitrator or for the Assistant Registrar to pass any effective order for recovery of the amount against the cashier (Para 6)

Ganga Singh for Petitioner Standing Counsel and N S Singhal for Respondents

CD/ED/B429/86/SMA

H. N SETH, Acting C.J — In all these four petitions petitioner Shish Ram claimed relief on similar grounds. They can be disposed of by a common judgment

2. Petitioner Shish Ram was a cashier of Bhoorgarhi Sadhan Sahkari Samiti Ltd district Meerut Respondent No 3 Hazar Singh in Writ Petition No 3643 of 1976 Musaddi respondent No 3 in Writ Petition Nos 3644 and 3645 of 1976 and Nawab Ali respondent No 3 in Writ Petition No 3646 of 1976 had obtained loan from Bhoorgarhi Sadhan Sahkari Samiti Ltd. Subsequently a controversy was raised as to whether or not the said respondents had repaid the amount borrowed by them and in that regard four references were made under section 70 of the U P Co-operative Societies Act for adjudicating the claim of the Bhoorgarhi Sadhan Sahkari Samiti Ltd The defence of respondents No 3 in all these cases was that they had paid back the entire amount of loan to the petitioner who was the cashier of the society They also filed receipts said to have been obtained from the petitioner in support of their respective cases The Arbitrator decided all the four references on 20-12 1974 by making awards based on similar reasoning The Arbitrator observed that in all these cases Shish Ram had given evidence to the effect that he had neither received any amount from the three debtors nor did he issue any receipt to any of them. The Arbitrator accepted the statement made by Shish Ram in this regard and made an award against these debtors and accepted the claim made by the society

3. Aggrieved the three debtors went up in appeal before the Assistant Registrar Co-operative Societies While the appeals were pending the three respondents took the stand that the document purporting to be the receipts from the petitioners filed by them before the Arbitrator appeared to have been substituted by forged document They contended that Shish Ram had in his statement before the Arbitrator admitted his signatures on the receipts which had been filed by them But then the receipt which are now found place on the record actually did not bear any signatures It, therefore appeared that the receipts that were available on record had been subsequently substituted The Assistant Registrar appears to have accepted the submission made by the debtors and held that Shish Ram had, before the Arbitrator admitted his signatures on the receipts filed by the debtors and that these receipts had been surreptitiously removed from the record and substituted by forged document In the circumstances he concluded that in fact the three debtors had paid back the entire amount of loan taken by them to petitioner Shish Ram who had embezzled the same The Assistant Registrar accordingly allowed the appeals filed by the three debtors and directed that the amounts involved be recovered from Shish Ram the present petitioner

4 Aggrieved Shish Ram has approached this Court for relief under Article 226 of the Constitution of India Learned counsel appearing for the petitioner, Shish Ram vehemently contended that the appellate court had erred in directing recovery of the amounts involved from Shish Ram for following two reasons —

(i) No dispute regarding recovery of any amount by the Co-operative Society from Shish Ram had been referred for arbitration The Assistant Registrar therefore had no jurisdiction to direct recovery of any amount from him

(ii) There was absolutely no material on the record before the Assistant Registrar, to indicate that Shish Ram had before the Arbitrator admitted that he had actually signed the receipts filed by respondents No 3 The inference drawn by the Assistant Registrar on the basis of arguments raised on behalf of the three debtors did not constitute evidence for recording any finding by the Assistant Registrar

5. Inasmuch as we are inclined to accept the first argument raised on behalf of Shish Ram it is not necessary for us to express any concluded opinion on the question as to whether or not the finding recorded by the Assistant Registrar with regard to the receipts said to have been obtained by the three debtors is based on any evidence or not

6 So far as the first submission is concerned it cannot be disputed that an Arbitrator under S 70 of the Co-operative Societies Act is entitled to decide only such dispute as is referred to him under the provisions of the Act In the instant case the

only dispute which was referred to the Arbitrator was whether or not the three debtors were liable to pay the amount claimed by the Co-operative Society to it The controversy whether or not the liability for the said amount rest with Shish Ram was not referred to the Arbitrator In the circumstances it was not within the domain either of the Arbitrator or of the Assistant Registrar to pass any effective, order against Shish Ram We are accordingly of opinion that the appellate orders passed by the Assistant Registrar dated 31 9-1975 in Writ Petition Nos 3643 and 3644 of 1976 and those dated 1 10-1975 in Writ Petitions No 3645 and 3646 of 1976 in so far as they direct recovery of the amount from petitioner Shish Ram deserve to be quashed

7 In the result these four petitions succeed and are allowed The appellate orders of the Assistant Registrar dated 21 9 1975 involved in Writ Petition No 3643 and Writ Petition No 3644 of 1976 and those of date 1 10-1975 in Writ Petition No 3645 of 1976 and Writ Petition No 3646 of 1976 in so far as they direct recovery of various amounts from the petitioner Shish Ram are quashed Parties to bear their own costs.

Petitions allowed

1986 ALL. L. J 749

H N SETH Actg C J AND
A N VERMA J

Surendra Pal Petitioner v The Admission Committee, Allahabad University and another Respondents

Civil Misc Writ Petn No 5124 of 1985 D/ 5 12 1985

Constitution of India, Art. 226 — Education — Admission to B Tech. Course — Resolution of Admission Committee to give 5% weightage to sons and wards of defence personnel — List of selected candidates published before passing said resolution — Admission could not be sought on ground of said resolution

(Para 8A)

L P Nathani for Petitioner Standing Counsel for Respondents

BD/ED/A881/86/AAJ/SNV

H. N SETH Actg , C. J — Aggrieved by the action of the respondents in not admitting him to B Tech Course of the Allahabad University for the Session 1984-85 petitioner Surendra Pal has approached this Court for relief under Art 226 of the Constitution

2 For the year 1984 85 there were 30 seats in the B Tech Course run by the Allahabad University According to the criteria laid down by the Admission Committee admissions to the said Course were to be made on the basis of comparative merit as disclosed by the marks obtained by various candidates in their B Sc examinations The University invited applications for admission to the said B Tech Course by 18 3-1985 Petitioner Surendra Pal who had secured 581 marks in his B Sc examination also made an application for admission to the said B Tech Course On 1 3 1985 Major S S Roy Chowdhury of 4 Infantry Division addressed a letter to the Vice Chancellor of the Allahabad University forwarding therewith the application received by him from Sub-Maj T R Verma, father of the petitioner regarding weightage being given to the sons of Army personnel in the matter of admission to B Tech Course of the University The Vice Chancellor forwarded the letter received by him from Maj Chowdhury to Prof S R Sinha, Chairman of the Admission Committee on 2 3-1985 after making following endorsement thereon —

It appears to me that some weightage for wards of Defence personnel will be in order This is being done in all Indian Universities You may like to bring this matter before the Admission Committee "

Prof S R Sinha, Chairman of the Admission Committee appeared to agree with the Vice-Chancellor Accordingly on 15-3-1985 he made the following note on the letter of Maj Chowdhury —

I suggest that 5% weightage on the standardised marks of the category of candidates be given You may if you think it proper approve of this and I may be allowed to report the matter to the Admission Committee in its next meeting

It appears that before the matter could be placed before the Admission Committee in its next meeting which took place on 26-3-1985 the Admission Committee released a list of 28

candidates selected for admission to the said B Tech Course on 18-5-1985 The said list indicated that the candidates securing 601 marks and above in their B Sc Examinations had been admitted

3 The petitioner claims that a meeting of the Admission Committee took place on 26-3-1985 and in that meeting the Committee passed a resolution for giving 5% weightage to the wards of army personnel. In support of this plea learned counsel for the petitioner strongly relied upon the following endorsement made by Prof S R Sinha Chairman of the Admission Committee on the letter from Maj Chowdhury —

Weightage approved by the Admission Committee on 26-3-1985

Sd/ S R Sinha
26-3-1985

Subsequently the Admission Committee released a further list of three more candidates admitting them to the said B Tech Course on 1-4-1985 These three candidates had received 653 615 and 604 marks respectively in their B Sc Examinations

4. The stand taken by the petitioner is that he was, being the son of an army personnel, entitled to 5% weightage as per resolution of the Admission Committee dated 26 3 1985 Taking into account the said weightage the merit of the petitioner for the purpose of admission to B Tech Course had to be judged on the basis that he had secured 610 marks in the B Sc Examination (581 + 5% weightage thereof) According to the petitioner the University had made admissions to the B Tech Course arbitrarily by leaving out persons securing higher marks in the B Sc Examinations and admitting persons who had secured lower marks in their respective B Sc Examinations Inasmuch as the persons securing less than 610 marks in the B Sc Examinations had been admitted by the University to its B Tech Course the petitioner was also entitled to be so admitted

5. On behalf of the University it is seriously disputed that the Admission Committee passed any resolution giving, in the matter of admission to B Tech Course 5% weightage to the wards of army personnel Despite the endorsement dated 26-3-1985 made by Professor S R Sinha (who unfortunately is now dead) on the letter of Maj Chowdhury to the effect that weightage had been approved by the Admission Committee on 26 3 1985 the stand taken by the University is that no such resolution was passed by the Admission Committee in its meeting which took place on 26 3 1985 In support of this submission the University has along with an affidavit filed the minutes of the said meeting which do not mention anything about any weightage being given to the sons and wards of army personnel in the matter of admission to post graduate courses The genuineness of the said minutes has been seriously disputed by the petitioner who also referred us to certain circumstances which indicated that the University was in the matter of admissions treating the sons and wards of army personnel in a special category entitled to some preferential treatment over the general candidates. However in the view which we are going to take in this case it is not necessary for us to resolve this controversy For our purposes we shall assume that the Admission Committee had in its meeting on 26 3 1985 decided that in the matter of admission to B Tech Course 5% weightage should be given to the sons and wards of defence personnel The main question that arises for consideration in this case is whether in such circumstances the petitioner can derive any advantage from the said resolution in so far as the question of his admission to 1984-85 B Tech Course is concerned

6. It is not disputed before us that it is the Admission Committee appointed for the purpose which is to make admissions to various courses run by the University Further it is for the Admission Committee itself to lay down the criteria for selecting candidates for admission to various courses in the University It is not disputed that the criteria laid down by the Admission Committee for admission to the B. Tech Course for the 1984-85 Session was comparative merit of the candidates computed on the basis of marks obtained by them in their respective B Sc Examinations. There is no controversy that up till 26 3 1985 there was no resolution of the Admission Committee giving weightage to the wards of defence personnel Averments made in various affidavits bring out that the University had fixed 18 3-1985 as the last date for receiving applications for admission to B Tech Course On the same day the Admission Committee

released a list of 28 candidates selected by it for admission to the B Tech Course in that list the names of the candidates who had secured 601 marks and above in their B Sc Examinations had been included Inasmuch as the Admission Committee had, by 18 3 1985 when it was making admission for the said B Tech Course not decided to give any weightage to the wards of defence personnel, there was absolutely no question of giving preference to the petitioner in the matter of admission to B Tech Course over any of the twentyeight candidates who had been selected for admission to B Tech Course on 18 3 1985 Whereas the petitioner had secured only 581 marks in his B Sc Examination the names of the candidates securing 601 marks and above alone had been included in the list of selected candidates

7 The case of the petitioner however is that the Admission Committee released the second list on 1-4-1985 Before that date the resolution of the Admission Committee giving 5% weightage to the wards of defence service personnel had become effective The three candidates who have been admitted under the list released on 1 4-1985 had secured 653 615 and 604 marks respectively in their B Sc examinations

8 Learned counsel appearing for the University has strongly refuted aforesaid submission made on behalf of the petitioner According to the University the admissions to fill all the thirty seats in B Tech Course were to be made on 18 3 1985 The Admission Committee had accordingly prepared a list of first 30 candidates who had secured the highest marks in their B Sc Examinations The first two candidates mentioned in the list released on 1-4-1985 who had secured 653 and 615 marks in their respective B Sc examinations were entitled to be selected for admission to B Tech Course But due to certain reasons it was not possible for the Admission Committee to declare their admission on 18 3 1985 that is why the admission of 28 candidates alone was announced and two seats were kept reserved for the aforementioned two candidates who had secured 653 and 615 marks in their respective B Sc Examinations so that after requisite formalities were completed they could be accommodated for admission to the said B Tech Course In the case of the third candidate in the list declared on 1 4 1985 it appears that it was by some mistake on the part of the Admission Committee that his name was not included in the list of candidates who were being admitted to the B Tech Course When this mistake was discovered by the University and it found that persons securing lower marks than him had already been admitted to B Tech Course the University admitted him as a special case and that is how the names of three candidates were included in the list for admission to B Tech Course released on 1 4-1985

8A. We are impressed by the aforesaid explanation offered by the University Having regard to the material brought on the record by means of various affidavits, we have no hesitation in concluding that the admissions to B Tech Course for the Session 1984 85 had been made by the Admission Committee on 18 3-1985 on the basis of the criteria then prevailing The announcement of admission in respect of the candidates whose names appeared in the list dated 1-4-1985 was delayed for the reasons already mentioned All the thirtyone candidates had thus been admitted to B Tech Course on the basis of the criteria as it prevailed on 18 3 1985 As already stated on that date there was no question of in the matter of admission giving any weightage to the sons and wards of defence service personnel Inasmuch as the petitioner had secured marks lower than all the 31 candidates, who had been admitted to the B. Tech Course he was, in the matter of admission not entitled to claim any preference over any of them

9 There is however one more aspect which has to be kept in mind for not accepting the petitioner s case that while releasing the list of candidates selected for admission on 1 4 1985 the Admission Committee should have taken into consideration the resolution which was passed by it on 26 3 1985 giving 5% weightage to the wards of defence personnel

10 It cannot be doubted that so far as the 28 candidates whose names had been released for admission on 18 3-1985 had been properly selected on the basis of criteria for admission as prevailing on that date Only two more seats remained to be filled It is obvious that the admission to the said two seats could not

be made by applying a criteria different from that which was applied while making admission to first 28 seats Application of a different criteria for filling the remaining two seats would have led to an objectionable discrimination In the circumstances, after making admission to 28 seats the admission to the remaining two seats had necessarily to be governed by the same criteria Viewed in this light, any resolution passed by the Admission Committee on 26-3-1985 giving 5% weightage to the wards of defence service personnel could not be operative for admission to the 1984-85 B Tech Course If at all, it would apply for admission to future course only

11 Learned counsel for the petitioner also contended that as a matter of fact the University for purposes of making admissions to the B Tech Course had acted arbitrarily inasmuch as it had while issuing the list dated 18-3-1985 selected certain candidates who had secured marks lower than the two candidates whose names appear at items Nos 2 and 43 in the list released by them on 1-4 1985 The circumstances in which the names of the candidates had been omitted from the list released on 18 3 1985 have already been mentioned above and it cannot be said that the action of the Admission Committee in that regard was arbitrary The petitioner has not succeeded in showing that after ignoring the weightage which he claims and to which he is, according to not entitled, there is any candidate who has secured marks lower than him in his B Sc Examination who has been admitted to B Tech Course

12. In the result the petitioner has failed to convince us that he was entitled to be admitted to the B Tech Course for 1984-85 Session in preference to any of the candidates who had been so admitted by the University

13. The petition therefore, fails and is dismissed. In the circumstances, we direct the parties to bear their own costs

Petition dismissed

1986 ALL. L. J 752

S K DHAON AND S K MOOKERJI JJ

B P Singh Petitioner v District Magistrate Kanpur and others, Respondents

Civil Misc Writ Petn No 10602 of 1984 D/ 15 11 1985

(A) U P Cinemas (Regulation) Act (3 of 1956), S 5(3) — A partner not included in joint licence issued to some other partners of firm — He cannot be said to be aggrieved person within meaning of S. 5(3) — He cannot invoke appellate powers of State Government to cancel said licence

Where only some of the partners of a firm obtained a joint licence the partner not included in licence could not be said to have been aggrieved by the decision of licensing Authority refusing to grant a licence to him within the meaning of S 5(3) Therefore he could not invoke the appellate powers as contained in S 5(3) while making a representation to State Government to cancel the licence of said partners on the ground that his signatures had been forged upon the application made for grant of licence

(Para 9)

(B) U P Cinemas (Regulation) Act (3 of 1956), S 7 — Jurisdiction of State Government — Nature of — Proceedings for cancellation of licence before licensing authority as well as State Government — Licencing authority should cease to exercise jurisdiction under S. 7 the moment State Government initiates proceedings

A joint licence was issued in favour of some of the partners of a firm Partner not included in joint licence made a representation to licensing authority for cancellation of licence He also made the same representation to State Government which initiated proceedings

Held, it would be open to State Government to take action under S 7 so long as proceedings initiated by licensing authority under that provision were not concluded either way It could not be said that once licencing authority initiated proceedings under S 7 the State Government would become powerless On

---

CD/ED/B427/86/MS/SNV

the contrary the Licencing Authority should become inactive or cease to exercise jurisdiction under S 7 the moment the State Government initiated proceedings under that provision (Para 12)

Under S 7(1) the State Government and the Licensing Authority both are empowered to take action in a case where a licence has been granted by the Licensing Authority Under S 5(2) Licensing Authority is clothed with the power to grant a licence keeping in view not only the provisions of the Act but also the control of State Government Under S 7(4) order passed by Licensing Authority in a case of cancellation or revocation of a licence is amenable to the appellate jurisdiction of the State Government Hence it can be said that once State Government initiates proceedings under S 7 proceedings before Licensing Authority will come to an automatic end (Para 12)

R P Singh for Petitioner Standing Counsel for Respondents

S K DHAON, J — In this petition which has been preferred by one of the partners of a Firm Heer Palace Kanpur the principal relief claimed is the issue of a writ in the nature of prohibition restraining the State Government from proceeding further with the action initiated by it under section 7 of the U P Cinemas (Regulations) Act. 1955 (herein after referred to as the Act) for the cancellation of a cinematograph licence granted to the said Firm

2 It appears that Sri K P Singh the respondent No 8 was one of the partners of the said Firm It also appears that initially a joint licence was issued in favour of seven out of eight persons of the said Firm Sri K P Singh was one of the said partners Later on five persons obtained a joint licence and in this licence Sri K P Singh was not included Sri Singh made a representation to the District Magistrate (the Licensing Authority) for the cancellation of the licence on the ground that his signatures on the application had been forged and he (the District Magistrate) had been defrauded in issuing a licence to five of the partners

3 On 2nd April 1984 the Additional District Magistrate (City) put up a note to the District Magistrate that the grievance made by Sri K P Singh in the aforementioned application for the cancellation of the licence was the subject matter of a civil suit the matter was sub judice and, therefore it was not proper to proceed further in the matter He also opined that the proceeding should be initiated after the decision of the Civil Court On the foot of this note the District Magistrate made the following endorsement

I agree

4 Sri K P Singh made a representation to the State Government setting out therein the relevant facts and particularly the fact that his signatures had been forged upon the application made for the grant of a licence It appears that the State Government directed the District Magistrate to obtain the version of the petitioner and others in the form of an affidavit or affidavits Accordingly on 9th August, 1984 the District Entertainment Tax Officer Kanpur sent a communication to the petitioner and others requesting them to appear on 21st August, 1984 to give their versions At this stage this petition was preferred in this Court

5 In support of this petition it is urged that the proceeding initiated by the State Government is without jurisdiction In the forefront the submission made is that Sri K P Singh having once invoked the jurisdiction of the District Magistrate or the Licensing Authority for the cancellation of the licence the doors of the State Government, so far as he was concerned, closed automatically This argument is founded on a reading of section 7 which shows that the powers of the State Government and the Licensing Authority in the matter of cancellation of licence are concurrent For appreciating this submission it may be necessary to read a few provisions of the Act

6 Sub-section (1) of Section 5 lays down the conditions under which a licence is to be granted

7 Sub-section (2) provides that subject to the provisions of Section 5 and to the control of the State Government and the interests of the general public the Licensing Authority may grant licences under this Act on such terms and conditions and subject to restrictions as it may determine and on payment of such fees as may be prescribed

8 Sub-section (3) may be extracted as an argument has been built upon the same

Any person aggrieved by the decision of a licensing authority refusing to grant a licence under this Act may within such time as may be prescribed, appeal to the State Government and the State Government may make such order in the case as it thinks fit

9 We may at this stage straightway deal with one part of the submission Sri Bhatnagar is right in his submission that sub-section (3) of S 5 was not available to Sri K. P Singh Surely he was not aggrieved by the decision of the Licensing Authority refusing to grant a licence to him and therefore he could not invoke the appellate powers as contained in sub-sec (3) while making a representation to the State Government to cancel the licence of the petitioner and others

10 Sub-section (1) of Section 7 may also be extracted It reads

Notwithstanding anything contained in this Act where a licence has been granted under Section 5 it may be cancelled or revoked in the public interest —

(i) by the State Government where the licence was granted by the Government or by the Licensing authority

(ii) by the licensing authority where the licence was granted by such authority

11 Sub-section (1 A) of Section 7 lays down the conditions under which a licence may be cancelled or revoked One of them being that the licence was obtained through fraud or misrepresentation

12 Sub-section (2) provides that where the State Government or the licensing authority is of the opinion that a licence granted under Section 5 should be cancelled or revoked it shall as soon as may be communicate to the licensee the grounds on which the action is proposed to be taken and shall afford him a reasonable opportunity of making a representation against it

Sub-section (4) may be extracted

"Where the order suspending licence under the proviso to sub-section (2) or cancelling or revoking it under sub-section (3) has been passed by a licensing authority any person aggrieved by the order may within thirty days of the communication of such order to him appeal to the State Government which may pass such order as it may think fit

One of the well known principles of the construction is that a collision of the jurisdiction or conflict of the jurisdiction should be avoided Keeping this principle in view let us now examine the submission made by Sri Bhatnagar that in the instant case if the State Government is allowed to proceed further in the contemplated proceeding under section 7 there is bound to be a collision in the course adopted by the Licensing Authority and by it (the State Government) We have already seen in sub-section (1) of Section 7 that the State Government and the Licensing Authority are empowered to take action in a case where a licence has been granted by the Licensing Authority It is to be noted that in the instant case the licence was granted by the District Magistrate acting as the Licensing Authority Having considered the matter carefully we are of the opinion that it will be open to the State Government to take action under Section 7 so long as the proceedings initiated by the Licensing Authority are not concluded either way Once the State Government sets the ball rolling by initiating proceedings under section 7 the proceedings before the Licensing Authority will come to an automatic end It is to be remembered that in sub-section (2) of Section 5 the Licensing Authority is clothed with the power to grant a licence keeping in view not only the provisions of the Act but also the control of the State Government It follows that superintendence and direction of the State Government over the Licensing Authority are implicit In any case the State Government is vested with the power of regulating the activities of the Licensing Authority in the matter of grant of a licence In sub-section (4) of Section 7 we find that an order passed by the Licensing Authority in a case of cancellation or revocation of a licence is amenable to the appellate jurisdiction of the State Government Therefore it cannot be said that once the Licensing Authority initiates proceedings under Section 7 the State Government becomes powerless On the contrary as already emphasized by us the Licensing Authority should become inactive or cease to exercise the jurisdiction under Section 7 the moment the State Government initiates proceedings under that provision

13 That matter can be looked at from another angle Section 4 provides that the District Magistrate shall act as the Licensing Authority However proviso to it empowers the State Government to constitute for the whole or any part of the State such other authority as it may specify in the notification to be the Licensing Authority for the purposes of the Act On 9th May 1977 a notification was issued by the State Government whereby the Entertainment Tax Commissioner U P concurrently with the District Magistrate was empowered to exercise the power of the Licensing Authority under section 7 We have already extracted above the order passed by the District Magistrate (Licensing Authority) In our opinion the licensing authority in the instant case did not pass any order at all He did not apply his mind to the controversy before him He acted mechanically in just saying I agree Therefore for the purpose of this petition there can be no difficulty in taking a view that really proceedings under section 7 were not initiated at all by the Licensing Authority

14 This petition has not been formally admitted However affidavits have been exchanged between the parties We have heard learned counsel for both the sides We are therefore proceeding to dispose of this petition finally

15 This petition lacks merit and it is dismissed summarily The interim order passed by this Court on 17th August 1984 is hereby vacated

Petition dismissed

1986 ALL L J 755

S K DHAON J

Hira Lal Swami Petitioner v 3rd Addl District Judge Banda and another Respondents

Civil Misc Writ Petn No 4128 of 1980 D/ 15 1 1986

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), Ss. 21(1)(a) Explanation Cl (1) Fourth Proviso and (3) Explanation (as inserted by Amending Act 28 of 1976) — Release of accommodation — Tenant s widowed daughter residing with him building residential building in same city — Tenant could not object to landlord s application for release

The landlord filed an application under S 21(1)(a) for release of the residential accommodation At the relevant time apart from the tenant his widowed daughter and her son had been residing in the accommodation in dispute During the pendency of the proceedings the widowed daughter of the tenant built a residential building in the same city wherein the accommodation in dispute was situated It was the case of landlord that in view of Explanation to S 21(1) it was not open to the tenant to raise any objection to the application for release of the accommodation made by the landlord The tenant contended that the provisions of the Explanation really meant that the terms of the Explanation will apply only if a member of the family of a tenant continued to reside with the tenant despite his building or acquiring a house in the same city Any other construction according to the tenant would lead to great hardship to the tenant

Held the application of the landlord for release was maintainable The provisions of the Explanation envisage two different categories of a member of the family of a tenant The one is he or she who has been normally residing with the tenant and the second is he or she who is wholly dependent on the tenant The legislative mandate that a tenant having his own accommodation in a city etc should not be permitted to remain in occupation of another accommodation as a tenant in the same city etc can neither be dubbed as arbitrary or harsh or unreasonable and that appears to be the legislative intent in sub-sec (3) of S 12 and Explanation (1) to sub sec (1) of S 21 The position is clear that cl (1) to the Explanation to sub-sec (1) of S 21 had full play even before the insertion of the fourth proviso to sub-sec (1) of S 21 Its effect was that upon the fulfilment of the condition laid down in the said clause the objection of the tenant against the application made by the landlord under S 21(1)(a) could not be entertained The Legislature kept up this policy

by providing expressly that the terms of the fourth proviso will not apply to a situation governed by the Explanation The net result is that cl (i) to the Explanation prohibits the consideration of the objection of the tenant to an application for release made by the landlord under S 21(1)(a) altogether

(Paras 13 14 16)

Cases Referred Chronological Paras

1980 All Rent Cas 55 (1980) 6 All LR 2 (FB) 15

R R K Trivedi, for Petitioner W H Khan S C for Respondents

ORDER — This petition at the instance of a tenant, is directed against an order passed by the Appellate Authority constituted under the U P Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972 (hereinafter referred to as the Act) allowing the appeal of the landlord and reversing the order of the Prescribed Authority By the impugned order dated 15th March 1980 the application purported to have been made by the landlord under S 21(1)(a) of the Act for the release of a residential accommodation has been allowed Initially the tenant was a mortgagee in possession of the accommodation in dispute The landlord redeemed the same However the petitioner was permitted to occupy the accommodation as a tenant

2 The Prescribed Authority recorded a finding that the need of the landlord was neither bona fide nor genuine It also recorded a finding that the tenant will suffer greater hardship than the landlord in the event the application of the landlord for the release of the accommodation in dispute is accepted The Appellate Authority disagreed with the view of the Prescribed Authority on both the counts

3 It is not in dispute that at the relevant time apart from the tenant his widowed daughter and her son had been residing in the accommodation in dispute In the counter affidavit filed in this Court by and on behalf of the landlord it has been averred that after the impugned order of the Appellate Authority the said daughter of the tenant built a residential building in the same city wherein the accommodation in dispute is situated This averment has not been denied in the rejoinder affidavit filed by and on behalf of the petitioner tenant We have therefore to proceed on the assumption that the averments made in the counter affidavit are correct

4 It is now well settled that the subsequent event namely the building of a house by the widowed daughter of the tenant can be and should be taken into account in proceedings under Art 226 of the Constitution The Explanation to sub-sec (1) of S 21 of the Act which is relevant for the present petition provides that in the case of a residential building where the tenant or any member of his family who has been normally residing with him or is wholly dependant on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city municipality notified area or town area no objection of a tenant against an application under this sub-section shall be entertained In view of this provision it is not open to the tenant to raise any objection to the application for the release of an accommodation made by the landlord

5 Learned counsel for the tenant contends that the provisions as contained in the Explanation aforementioned really mean that the terms of the Explanation will apply only if a member of the family of a tenant continues to reside with the tenant despite his building a house or acquiring a house etc in the same city etc Any other construction according to him, will lead to a great hardship to the tenant This submission is not sustainable either on principle or authority

6 The relevant provisions of the Act are these S 12 provides that a landlord or a tenant of a building shall be deemed to have ceased to occupy a building or part thereof if he has allowed it to be occupied by any person who is not a member of his family Family is defined in S 3(g) to mean in relation to a landlord or tenant of a building his or her spouse male lineal descendants such parents grand parents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant as may have been residing with him or her and includes in relation to a landlord any female having a legal right of residence in that building Sub-sec (3) of S 12 provides that in the case of a residential building if the tenant or any

member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city municipality notified area or town area in which the building under tenancy is situate he shall be deemed to have ceased to occupy the building under his tenancy The Explanation to sub-sec (3) provides that the expression any member of family in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant. This Explanation was inserted by the U P Act No 28 of 1976

7 Sub section (4) of S 20 makes a provision for relieving the tenant against his liability for eviction on the grounds mentioned in cl (a) of sub-sec (2) of S 20 if the tenant makes the requisite deposits in accordance with the condition laid down in sub-sec (4) However in the proviso to sub-sec (4) the concession given in the enacting clause has been taken away in a situation where a tenant or any member of his family has built or has otherwise acquired in a vacant state or has got vacated after acquisition any residential building in the same city municipality notified area or town area

8 Section 21(1) as relevant to the present controversy provides that the Prescribed Authority may on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession trade or calling or where the landlord is the trustee of a public charitable trust for the objects of the trust.

9 The fourth proviso to sub-sec (1) of S 21 was inserted by the U P Act No 28 of 1976 with retrospective operation It reads —

Provided also that the Prescribed Authority shall, except in cases provided for in the Explanation take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed

10 Clause (i) of the Explanation to S 21(1) reads —

In the case of a residential building (i) where the tenant or any member of his family who has been normally residing with or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city municipality notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained (underlined by me)

The aforequoted Explanation minus the portion underlined was in the statute book from the very inception In other words the same was in existence before the insertion of the fourth proviso aforequoted by the U P Act No 28 of 1976 The words underlined by me in the Explanation were inserted by U P Act No 28 of 1976

11 It will be immediately seen that the words has been normally residing with him or is wholly dependent on him were designedly used by the Legislature in U P Act No 28 of 1976 These words are free from any ambiguity and have a clear meaning It is well known that primarily the intention of the Legislature has to be gathered by the words used by it A court of law may add or subtract words in exceptional cases where it feels that the Legislature has not been able to effectuate its intention by the words used by it In other words it is permissible to a court to legislate in the garb of interpretation only in a situation where the words used by the Legislature do not convey a clear meaning No such contingency exists with regard to the words used by the Legislature in the instant case

12 The element of hardship has no place where the words used by the Legislature are free from ambiguity We have already seen that the relevant words used by the Legislature are not susceptible of creating any doubt or confusion On the contrary by introducing the words underlined by me in the Explanation by U P Act No 28 of 1976 the Legislature has taken a definite step to mitigate the rigour of the provisions as contained originally in the Explanation But for these words inserted by the U P Act No 28 of 1976 the consequences as contemplated by the provisions as contained

in the Explanation would have ensued immediately if any member of the family of a tenant built or acquired in a vacant state etc a residential building in the same city We have already seen the definition of the family under S 2(g) For example if either the spouse of a tenant or male lineal descendants of a tenant even though living far away from the tenant and not having a normal residence with the tenant constructed a house or acquired the same in the vacant state etc in the same city the tenant would have become defenceless in an action taken by the landlord under S 21(1)(a) for the release of an accommodation Realising the gravity of the hardship to the tenant the Legislature intervened and introduced the provision with a retrospective effect that the tenant will be obliged to give a cake-walk to landlord in proceedings under S 21(1)(a) only in a situation where any member of the family of the tenant who has been normally residing with him or is wholly dependent on him builds a house or acquires the same in a vacant state etc

13 The submission of the learned counsel for the tenant that for attracting the terms of the Explanation a member of the family of the tenant should continue to reside with the tenant is not tenable It is not the submission of the learned counsel nor can it be that the word or in the portion underlined by me should be read as and We have already seen that a similar provision has been made by the Legislature in the Explanation to sub-sec (3) of S 12 We have also seen that the relevant provisions in the Explanation to sub-sec (3) of S 12 and in the Explanation to sub-sec (1) of S 21 were inserted by the Amending Act No 28 of 1976 In the Explanation to sub-sec (3) of S 12 the Legislature left no room for any controversy when it used the clear words neither been normally residing with nor is wholly dependent on such tenant If this cannot be done or should not be done then it is crystal clear that the provisions of the Explanation envisage two different categories of a member of the family of a tenant The one is he or she who has been normally residing with the tenant and the second is he or she who is wholly dependent on the tenant

14 The preamble to the Act states that the Legislature has intervened in the interest of the general public for regulation of letting and rent of and the eviction of tenants from certain class of buildings situated in urban areas and for matters connected therewith Therefore the policy and the object of the Act no doubt is the mitigation of the hardship of the tenants and such mitigation can be attained by several measures Balancing of the interest of the landlord on the one hand and the tenant on the other in a reasonable manner appears to be an ideal approach for administering the provisions of the Act The paucity of accommodations can only be met by house constructing activity on a large scale and this activity has to keep pace with ever increasing population Social legislations alone cannot be the panacea. By means of legislation only some regulations can be enforced Therefore the legislative mandate that a tenant having his own accommodation in a city etc should not be permitted to remain in occupation of another accommodation as a tenant in the same city etc can neither be dubbed as arbitrary or harsh or unreasonable and that appears to be the legislative intent in sub-s (3) of S 12 and Explanation (i) to sub sec (1) of S 21

15 In Mangi Lal v Additional District Judge 1980 All Rent Cas 55 (FB) the provisions of clause (i) of the Explanation to sub-sec (1) of S 21 came up for consideration before five Hon ble Judges of this Court This Court held that in view of the contents of the Explanation a tenant is precluded from raising any objection to the release application made by a landlord under S 21(1)(a) His say is limited to the question whether the conditions as laid down for the application of the contents of the Explanation are in existence

16 Learned counsel for the petitioner has rightly contended that despite the fulfilment of the conditions as laid down in cl (1) to the Explanation the condition precedent to the acceptance of an application made by the landlord under S 21(1)(a) is the satisfaction of the Prescribed Authority that the building is bona fide required by the landlord for occupation by himself or any member of his family He however contends that the tenant despite the explanation, has not been deprived of his right to contest the application on merits so far as the case set up by the landlord that the building is bona fide required by him is concerned He points out that the fourth proviso to S 21(1) and the Explanation should

be read together In other words in the Explanation the legislative intent is that the objection of the tenant that he would suffer greater hardship than the landlord if an order of release is passed alone is excluded from consideration This submission runs counter to the decision of the Full Bench of this Court in Mangi Lal's case (supra) that apart I have already emphasised that the Explanation was in the statute book from the very inception that is when the U P Act No 13 of 1972 was enforced with effect from 15th July 1972 The fourth proviso was inserted retrospectively by the U P Act No 28 of 1976 Before this was done R 16 of the Rules framed under the Act enjoined that while considering an application under S 21(1)(a) the authority concerned should compare the comparative hardship of the landlord and the tenant This Rule was struck down by a Full Bench of this Court on the ground that it ran counter to the express provisions in S 21(1) Thereafter the fourth proviso was inserted by the Legislature Thus the position is clear that Cl (i) to the Explanation had full play even before the insertion of the fourth proviso Its effect was that upon the fulfilment of the condition laid down in the said clause the objection of the tenant against the application made by the landlord under S 21(1)(a) could not be entertained The Legislature kept up this policy by providing expressly that the terms of the fourth proviso will not apply to a situation governed by the Explanation The net result is that Cl (i) to the Explanation prohibits the consideration of the objection of the tenant to an application for release made by the landlord under S 21(1)(a) altogether

17 The Appellate Authority has recorded a clear finding that the need of the landlord for the accommodation in dispute is bona fide and genuine This finding is based on the appreciation of the material placed on record by the landlord There is no infirmity in the finding so as to entitle the petitioner to invoke the jurisdiction of this Court under Art 226 of the Constitution

18 In the result this petition fails and is dismissed However there shall be no order as to costs

Petition dismissed

1986 ALL L J 759

B L YADAV J

Niyaz Ahmad and others, Petitioners v The D D C Varanasi and others Respondents

Civil Misc Writ Petn No 8565 of 1974 D/ 17 12 1985

U P Zamindari Abolition and Land Reforms Act (1 of 1951), S 134 (as amended by Act 21 of 1962) — T P Act (1882), S 43 — Tenure holder executing sale deed on date on which he was not Bhumidar — Vendor, however, depositing ten times rental under S 134 on same date — Sale deed executed on that date in favour of vendee is valid — Vendor is estopped from denying bhumidari rights in favour of vendee in view of S 43

Where a tenure-holder after commencement of Amendment Act of 1962 had executed a sale deed on the date on which he was not a Bhumidar but had deposited ten times rental on that date he was entitled to be declared as a Bhumidar from the date of deposit itself in view of S 134 and sale deed executed in favour of vendee on that date was valid and legal even though sanad Bhumidari was prepared and issued on a later date Apart from S 134 of the Act the assistance can be had from S 43 of the T P Act which enacts a rule of feeding the grant by estoppel In other words when a person transfers property to which he had no transferable title on the date of transfer, but he makes representation that he has transferable interest therein, and acting on that representation the transferee takes a transfer for consideration and in the meanwhile if the transferor acquires transferable rights he (transferor and his privies) would be estopped by the English Common Law doctrine of estoppel by deed from denying that he has no transferable rights There is an equitable doctrine applicable to such situation equity treats that as done which ought to be done Thus transfer so made in favour of vendee before grant of Bhumidari sanad would be legal and vendor would be estopped from denying such right in favour of vendee Case-law discussed (Paras 7 8 9)

Cases Referred	Chronological	Paras
1985 All LJ 278	AIR 1985 SC 694	14

CD/ED/B442/86/BNG/SNV

1974 Rev Dec 94 6 13
AIR 1973 SC 2451 5 16
AIR 1973 All 292 1973 All LJ 168 6 13
AIR 1971 All 526 1971 All LJ 937 (FB) 5 16
1971 Rev Dec 84 6 13
1966 Rev Dec 35 6
AIR 1965 All 504 6 13
(1888) 58 LJ QB 75 (1888) 13 AC 523 60 LT 162 (HL) Tailby v Official Receiver 12
(1860-62) 10 HLC 191 33 LJ Ch 193 11 ER 999 (HL) Holroyd v Marshall 10 11 12
(1972) 1 Ves Jun 477 29 ER 684 Legard v Hodges 12

R. H Zaidi, for Petitioners Surendra Nath Singh and Standing Counsel, for Respondents

ORDER — The petition under Art 226 of the Constitution is directed against the order dated 30-8 74 (Annexure E) passed by the Assistant Director of Consolidation Gyanpur

2 The facts leading to this petition are that one Mohammad Fakhar respondent No 6 was the tenure holder of Chak No 213 On 24-8-68 he is alleged to have executed an unregistered agreement of sale in favour of the petitioners In the meanwhile a power of attorney was executed by the respondent No 6 in favour of Mst Batul and she was given power to execute the sale deed in respect of the land in dispute Ten times rental was deposited in view of S 134 of the U P Zamindari Abolition and Land Reforms Act, (hereinafter referred to as the Act) for acquiring bhumidhari rights on 28 10-68 and on the same date a registered sale deed was also executed in favour of Nanku respondent No 3 Later on Mohammad Fakhar respondent No 6 executed a registered sale deed in favour of the petitioner on 4-9-61 (sic) after the sale deed in favour of respondent No 3

3 Both the vendees the petitioners and also the respondent No 3 applied for mutation of the sale deed during the consolidation operation It was alleged by the petitioners that as they had an agreement for sale in their favour hence no sale deed could have been executed in favour of respondent No 3 The case of respondent No 3 was that the power of attorney was executed by respondent No 6 in favour of respondent No 7 on 6-9-68 and the same was not cancelled by him, hence the sale deed in favour of the petitioners could not have been executed by him (Mohd Fakhar) It was further alleged that after depositing ten times rental the Sanad Bhumidhari was prepared and issued in the name of the tenure holder on 13-11 68 hence that would date back to the date of deposit and this means that the sale deed executed on 28 10-68 in favour of respondent No 3 was legal and thereafter no right was left in the vendor to execute another sale deed in favour of the petitioners It was further alleged that the claim of the petitioners was time barred

4 The Consolidation Officer decided the case in favour of respondent No 3 holding that the sale deed dated 28 10-68 was legal and the name of vendor Mohammad Fakhar shall be expunged and that of Nanku respondent No 3 shall be entered The petitioners preferred an appeal and the same was allowed by an order dt 17 11 72 Against that order the revision by respondent No 3 was allowed by the impugned order dated 30-8 74

5 Sri R H Zaidi appearing for the petitioners urged that the sale deed in favour of respondent No 3 dated 28 10-68 was illegal and void as by that date the Sanad Bhamidhari was not obtained and the same was obtained on 12 11-68 hence on the date of sale the vendor was not the bhumidhar and had no right to execute the sale deed The agreement for sale dated 24-8 68 was in favour of the petitioners hence respondent No 3 could not have obtained the sale deed from Mst Batul the lady holding the power of attorney from Mohammad Fakhar respondent No 6 that no benefit of S 43 of the Transfer of Property Act could be given to respondent No 3 under the facts and circumstances of the case He relied upon Banshidhar v Smt Dhirajadhari 1971 All LJ 937 (AIR 1971 All 526) (FB) and Gorakh Nath Dubey v H N Singh AIR 1973 SC 2451

6 Sri Surendra Nath Singh appearing for respondent No 3 urged that as the sale deed was executed in favour of respondent No 3 on 28 10-68 and ten times rental was also deposited in view of S 134 of the Act and the rules made thereunder and the Sanad Bhumidhari was issued on 12 11 68 that would have retrospective effect and confer bhumidhan rights on the vendor on the date

of sale and the sale deed in favour of respondent No 3 was valid and legal in any case with the help of S 43 of the T P Act even though the vendor might not have bhumidhari rights on the date of sale But that would enure for the benefit of the vendee after the bhumidhari Sanad was granted He further urged that the claim of the petitioners was time barred inasmuch as the agreement for sale was to be enforced by the petitioners within a period of three years as provided under Art 54 of the Limitation Act 1963 and neither any suit for the specific performance of the contract was filed by the petitioners nor a suit for cancellation of the sale deed in favour of respondent No 3 was filed within a period of three years in view of Art 59 of the Limitation Act 1963 Hence neither the sale deed in favour of respondent No 3 can be held to be illegal nor the agreement for sale in favour of the petitioners can now be enforced He distinguished the cases cited on behalf of the petitioners and placed reliance on Jagat Naram v Laljee AIR 1965 All 504 Deshraj v Lalsahai Singh 1973 All LJ 168 (AIR 1973 All 292) Ishtiaq Ahmad v The Commissioner Varanasi Division 1974 Rev Dec 94 Ram Swarup v Deputy Director of Consolidation (1971 Rev Dec 84) and Nian v Kunwar Sen 1966 Rev Dec 35 He further urged that as Mohammad Fakhar who executed the agreement for sale in favour of the petitioners did not deposit ten times rental rather the same was deposited by Mst Batul who was holding the power of attorney she executed the sale deed in favour of respondent No 3 whereas the sale deed of the petitioners was got executed by Mohammad Fakhar without cancelling the power of attorney hence the sale deed in favour of the petitioners was obviously illegal

7 I have heard the learned counsel for the parties The first point that falls for determination is whether the sale deed dated 28 10-68 in favour of respondent No 3 was illegal inasmuch as on that date the vendor was not the bhumidhar rather ten times rental was deposited and Sanad bhumidhari was issued on 12 11-68 After 1961 there was an amendment in the Act (U P Act No 21 of 1962) particularly in S 134 and other sections In section 134 it was clearly provided that If a sirdar pays or offers to pay to the credit of the State Government ten times of the land revenue payable on the date of application he shall upon an application duly made in that behalf to an Assistant Collector be entitled with effect from the date on which the amount has been deposited to a declaration that he has acquired rights (i e bhumidhari) mentioned in section 137 in respect of such land In the instant case as the amount was deposited on 28 10-68 (after the enforcement of U P Amendment Act No 21 of 1962) hence the depositor would be entitled to declaration of bhumidhari rights on the date of the deposit itself

8 I am of the opinion that even though the Sanad Bhumidhari was prepared and issued on 12th November 1968 but that shall have effect from the date of deposit and it would be deemed as if the person who had deposited the ten times rental became bhumidhar on the date of deposit and if on that date he executed a sale deed in favour of respondent No 3 that was perfectly legal

9 Apart from S 134 of the Act the assistance can be had from S 43 of the Transfer of Property Act which enacts a rule of feeding the grant by estoppel In other words when a person transfers property to which he has no transferable title on the date of transfer but he makes representation that he has transferable interest therein and acting on that representation the transferee takes a transfer for consideration and in the meanwhile if the transferor acquires transferable rights he (transferor and his privies) would be estopped by the English Common law doctrine of estoppel by deed from denying that he has no transferable rights There is an equitable doctrine applicable to such situation equity treats that as done which ought to be done

10 It would not be out of place to mention that ratio decidendi in Holroyd v Marshall (1860-62) 10 HLC 191 was the basis for enacting S 43 of the Transfer of Property Act

11 In Holroyd v Marshall (Supra) Lord Westbury has observed as follows

If a vendor agrees to sell property real or personal of which he is not possessed at the time and he receives the consideration for the contract and afterwards becomes possessed of property answering the description in the contract, there is no doubt that a court of equity

would compel him to perform the contract and that the contract would in equity transfer the beneficial interest to the purchaser immediately on the property (or transferable interest) being acquired

12 The aforesaid view was reaffirmed by the House of Lords in Tailby v Official Receiver (1888) 58 LJ QB 75 where Lord Macnaghten said

Long before Holroyd v Marshall was determined it was settled that an assignment of future property for value operates in equity by way of assignment binding the conscience of the assignor and so binding the property from the moment when the contract becomes capable of being performed on the principle that equity considers as done that which ought to be done and in accordance with maxim which Lord Thurlow said he took to be universal that whenever persons agree concerning any particular subject that in a court of equity as against the party himself and any claiming under him voluntarily or with notice raises a trust Legard v Hodges (1792) I ves Jun 477

13 Hon ble Gangeshwar Prasad J in Jagat Narain v Laljee AIR 1965 All 504 has taken the view and similarly by this Court in Deshraj v Lal Sahai Singh (AIR 1973 All 292) (Supra) Ramswarup v Dy Director of Consolidation (1971 Rev Dec 84) (supra) Ishtiaq Ahmad v The Commr (1974 Rev Dec 94) (supra) it was held that under these circumstances the equitable doctrine of feeding the grant by estoppel contained in S 43 would be applicable

14 The Supreme Court in Ram Pyare v Ram Narain AIR 1985 SC 694 (1985 All LJ 278) held in similar facts in respect of a transaction before the U P Amendment Act No 21 of 1962 that Section 43 of the Transfer of Property Act enacts a rule of estoppel which is of evidence and the representation as to title made by a transferor (Sirdar)who has no title at the time of transfer but the title or interest acquired later on (the Bhumidhari rights acquired on the grant of Bhumadhari sanad) would fasten itself on the title which the transferor subsequently acquires and the transfer so made before in favour of the transferee before the grant of bhumidhari Sanad would be legal and the vendor (or his privies) would be estopped from denying such right in favour of the transferees

15 The next point is that as the petitioners did not file a suit for specific performance of the contract within a period of three years as provided by Art 54 of the Limitation Act 1963 nor he has filed any suit for cancellation of the sale deed within a period of three years as provided by Art 59 the claim of the petitioners accordingly became time barred It is evident that if the petitioners wanted to enforce the agreement to sell the remedy for him was to file a suit for specific performance of the contract in view of provisions of Ss 10 and 15 etc (Chapter II) of the Specific Relief Act 1963 but of course within a period of three years Similarly the petitioners could also have filed a suit for cancellation of the sale deed in favour of respondent No 3 (Nanku) within limitation but they did not do so hence their claim became time barred

16 Banshidhar v Smt Dhirajadhari (AIR 1971 All 526) (supra) was a case where the controversy was whether the right of a bhumidhar accrues on the date of passing the order by the Assistant Collector for issuing a Sanad Bhumidhari or on the date when the actual Sanad Bhumidhari has been prepared Whatever may be deemed to be the date for accrual of bhumidhari rights but in view of section 134 (after U P Amendment Act No 21 of 1962) the sirdar would become bhumidhar on the date of deposit This case is besides the point Similarly Gorakhnath Dubey v H N Singh (AIR 1973 SC 2451) (supra) was a case about the jurisdiction of the civil and consolidation courts (revenue court) in respect of the voidable deeds and in substance it was held that where a deed was voidable the suit would lie in the Civil Court for cancellation of the same and in case it was void the aggrieved party can ignore the same or in other words the controversy can be decided by the consolidation authorities or the revenue courts In the instant case from the judgment it appears that the petitioners themselves alleged that the sale deed in favour of respondent No 3 was void Hence in that case the consolidation authorities have jurisdiction to adjudicate upon the same and the impugned orders passed by the Deputy Director of Consolidation are perfectly correct

17 In view of the discussions made hereinabove I am of the view that this petition

has no substance and the same is accordingly dismissed There shall however be no order as to costs It is however directed that in view of the order dated 19 8 75 the amount deposited shall be paid to respondent No 3

Petition dismissed

1986 ALL L J 763

S K DHAON J

Agha Sajid Ali Shah Petitioner v The Rent Control and Eviction Officer Aligarh and others Respondents

Civil Misc Writ Petn No 11748 of 1982 D/ 28 11 1985

U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S 17 — U P Urban Buildings (Regulation of Letting, Rent and Eviction) Rules (1972), R 10 — Application for allotment of accommodation by petitioner — Application bearing clear and explicit endorsement of landlord making his intention clear and unequivocal that accommodation in dispute should be allotted to petitioner — Application cannot be rejected on grounds that nomination made by landlord was not in proper form — There is no prescribed form or procedure for nominating a tenant by landlord (Para 4)

V K Gupta and A K Gupta, for Petitioner I H Khan Prakash Krishna and Standing Counsel for Respondents

ORDER — This petition at the instance of an applicant for the allotment of an accommodation is directed against an order dated 6th October 1982 passed by the IInd Additional District Judge Aligarh who by the same order dismissed three revision applications These applications have been made by three different persons including the petitioner whose applications for the allotment of the said accommodation had been rejected

2 The petitioner on 8th March 1982 made an application to the Rent Control and Eviction Officer (hereinafter referred to as the Eviction Officer) for the allotment of the said accommodation to him The application bore the following endorsement of the landlord Sri Altab Ahmad Khan the respondent No 2

Strongly recommended for favourable consideration and allotment

It appears Smt Kahkashan Parvin the respondent No 3 also made an application for the allotment of the said accommodation at some point of time posterior to the date of the application of the petitioner The landlord on 12th March 1982 gave a formal intimation of the vacancy of the accommodation to the Eviction Officer On 7th April 1982 he made an application to the Eviction Officer containing the following prayer —

It is therefore prayed that the court be pleased to make an allotment of the accommodation in question in favour of the applicant Sri Agha Sajid Ali Shah aforesaid who has been delivered vacant possession of the said accommodation on tenancy basis

3 The accommodation was allotted on 8th April 1982 to one Jamil Ahmad who it appears refused to occupy the same for some reason or the other Thereafter on 22nd July 1982 the said accommodation was allotted to the respondent No 3 The petitioner and two other applicants felt aggrieved went up in separate revisions and their revisions have been disposed of by the impugned order The learned Additional District Judge acting as a revisional authority has not given the benefit to the petitioner of the nomination made by the landlord in his favour on the ground that the same had not been made in proper manner Before going into this question a short controversy may be disposed of In the impugned order the revisional authority has proceeded on the assumption that sub-section (2) of S 17 of the U P Act No 13 of 1972 was applicable Learned counsel for the petitioner has drawn my attention to the averments made in the writ petition as also to the application made by the landlord nominating the petitioner as the prospective tenant and on the basis of these materials he has contended that really the controversy was to be resolved on the basis of the provisions as contained in sub section (1) of S 17 and not sub section (2) In the application made by the landlord to the Eviction Officer nominating the petitioner there is not even a whisper that he is in occupation of a portion of the accommodation

in dispute We have therefore to proceed on the assumption that really sub-section (1) of S 17 was to be taken into account

4 Neither in S 17 of the Act nor in R 10 of the Rules framed under the Act there is any prescribed form or procedure for nominating a tenant by a landlord It is well known that pith and substance of the matter should be looked into and not the form Here the endorsement made by the landlord upon the application made by the petitioner on 8th March 1982 was clear and explicit This was followed up by the application the prayer to which has already been extracted above I am satisfied that the landlord made his intention absolutely clear and unequivocal that the accommodation in dispute should be allotted to the petitioner The revisional authority has misapplied and misinterpreted the provisions of Ss 17 and 10 in taking the view that the nomination made by the landlord is not in the proper form The order therefore is not sustainable on this ground

5 The question is what should be the proper order passed by this Court? It appears from the application made by the landlord to the Eviction Officer nominating the petitioner that since 1982 the petitioner is in possession of the accommodation in dispute We are now in the year 1985 No useful purpose will be served by sending the case back to the revisional court for giving a fresh decision Now the stage has arrived when these proceedings should attain some finality

6 This petition succeeds and is allowed The order dated 22nd July 1982 passed by the Eviction Officer and as confirmed by the impugned order dated 6th October 1982 passed by the IInd Additional District Judge Aligarh are quashed The respondents are directed to treat the petitioner as an allottee of the accommodation in dispute The parties are directed to bear their own costs

Petition allowed

1986 ALL L J 764

(SUPREME COURT)

(From Allahabad)*

R B MISRA AND M M DUTT JJ

Civil Appeal No 413 of 1986 (with C M P No 36359 of 1984) D/ 10 4-1986

Maiku Appellant v Vilayat Hussain through L Rs Respondent

(A) U.P (Temporary) Control of Rent and Eviction Act (3 of 1947), S 7C — Application by tenant seeking permission to deposit rent in Court — Munsif cannot issue notice to landlord under S 7C(4) — Question whether landlord has refused to accept rent paid lawfully or otherwise cannot be enquired into — Notice is required to be given only after deposits are made in pursuance of permission

Section 7C gives a right to the tenant to deposit rent when a landlord refuses to accept any rent lawfully paid to him by the tenant A tenant may allege that the landlord had refused to accept any rent lawfully paid to him The section itself does not require the Munsif to go into the question whether the landlord had refused to accept the rent paid lawfully or otherwise Sub-s (4) of S 7C contemplates of only one notice after the deposits in pursuance of the permission granted to deposit the arrears of rent under this section In the absence of any provision for sending notice to the landlord before granting permission to the tenant a notice cannot be sent to the landlord before the passing of the order The sub-section clearly contemplates that on any deposit being made under sub-s (1) the court shall cause a notice of the deposit to be served on the landlord and the amount of deposit may be withdrawn by the landlord on application made by him to the court in this behalf If the Munsif was to accord the permission to deposit the arrears of rent merely on being satisfied that the necessary allegation as required by S 7C of the Act has been made viz the landlord had refused to accept the rent lawfully tendered to him he is not obligated to enquire whether the allegation made in the application was correct or not (Para 8)

---

*Second Appeal No 2337 of 1966 D/ 10 2 1976 (All)

(B) U.P (Temporary) Control of Rent and Eviction Act (3 of 1947), S 7C -- Eviction of tenant for default -- Tenant depositing rent in court -- Tenant must prove before Court the factum of refusal by landlord when he sought to make payment

The tenant must establish before the court in which the suit for eviction has been filed the factum of refusal by the landlord when the payment was sought to be made to him The mere fact that an application under S 7C for permission to deposit the arrears of rent has been allowed by the Munsif will not absolve the tenant from establishing before the court where the suit for eviction was filed that the landlord had refused to accept the rent lawfully tendered (Para 13)

Section 7C permits a tenant to deposit the arrears of rent in court only under two conditions (i) when the landlord refuses to accept any rent lawfully paid to him by the tenant in respect of any accommodation and (ii) where any bona fide doubt or dispute has arisen as to the person who was entitled to receive any rent referred to in sub s (1) in respect of any accommodation If the deposit of arrears of rent was a valid deposit in accordance with the requirements of S 7C certainly it will amount to payment to the landlord and the tenant will be absolved from the liability of being evicted But if the Munsif had only to accept the application and accord permission to the tenant to deposit the arrears in court merely on the basis that necessary allegations in the application as required by S 7C had been made the court trying the suit for eviction cannot be precluded from enquiring about the validity of the permission under S 7C (Para 9)

Mr R K Jain and Mr Shakeel Ahmed Advocates for Appellant Mr M A Khan Mr Manoj Swarup and Mr U S Prasad Advocates for Respondent

R. B MISRA, J -- The only question for consideration in this appeal by special leave is whether the deposit of arrears of rent under S 7C of the United Provinces (Temporary) Control of Rent and Eviction Act 1947 will save the tenant from the penalty of being evicted for non payment of rent

2 The appellant is a tenant of the respondent on a monthly rent of Rs 6 25 per mensem He fell into arrears of rent amounting to Rs 318 75 for the period from 1st October 1959 to 31st December 1963 The tenant did not pay the aforesaid amount in spite of the verbal demand Consequently the landlord served upon the tenant a notice of demand The tenant however failed to comply with the said notice hence he became a defaulter The landlord thereafter served another notice on the tenant under S 106 of the Transfer of Property Act The tenant however neither vacated the premises nor cleared the arrears of rent The landlord was therefore obliged to file a suit He however claimed a sum of Rs 176 68 as arrears of rent for the period from 1st October 1961 to 8th February 1964 the claim for rent for the remaining period having become barred by time He also claimed a sum of Rs 58 23 as damages for the period from 9th February 1964 to 22nd October 1964 as also pendente lite and future damages at the rate of Rs 6 25 per mensem

3 The claim was resisted by the tenant on the ground that he was not a defaulter inasmuch as whatever rent was tendered to the landlord he refused to accept the same and, therefore he was constrained to deposit the amount that is a sum of Rs 231 25 for the period from 1st September 1961 to 30th September 1964 in the Court under S 7C of the Act He also disputed the date of tenancy as alleged by the respondent landlord

4 The trial court came to the conclusion that the defendant became a tenant from 17th January 1962 and not from 1959 as alleged in the plaint As the deposit of arrears of rent by the tenant under S 7C was not a valid deposit therefore it could not absolve the liability of the tenant from eviction inasmuch as the defendant had failed to establish that the landlord had refused to accept the tender made by the tenant Accordingly the suit for recovery of arrears of rent amounting to Rs 154/ and damages amounting to Rs. 58 23 was decreed with pendente lite and future mesne profits at the rate of Rs 6 25 per mensem

5 On appeal the learned Addl Civil Judge reversed the finding of the trial court and held that the tenant was not a defaulter on account of the deposit made by him under S 7C of the said Act and set aside the judgment and decree of the trial court for eviction In second appeal

the High Court set aside the judgment and decree of the lower appellate court as regards eviction and restored the decree of the trial court The tenant has now come in appeal to this Court as stated earlier by special leave

6 Shri R K Jain appearing for the appellant has contended that if the arrears of rent had been deposited with permission of the court under S 7C of the Act it will be presumed that the landlord had refused to accept the rent tendered by the tenant As a second limb to this argument it was contended that it was not open to the Court in a suit for eviction to go into the question of validity of the deposit made under S 7C He produced a certified copy of the order of the Munsif City Kanpur dated 30th July 1962 allowing the application made by the tenant for permission to deposit the arrears of rent The order reads

This is an application under S 7C(1) of the U P Act III of 1947 The opp party was served with the notice No objection filed The case falls under S 7C(1) the ingredients of which are made out Hence the applicant tenant is allowed to deposit rent in this Court regularly under S 7C(1) and the opp party landlord is entitled to withdraw the money

On the strength of this order it was strenuously contended by Shri Jain that no objection was ever raised by the landlord in proceedings under S 7C of the Act and therefore it is not open to him to raise the question of validity of the order passed under S 7C

7 The question that squarely falls for consideration is whether the order granting permission to the tenant to deposit the arrears of rent in court is sacrosanct and cannot be challenged in a regular suit for eviction Indeed the Munsif before whom the application for permission was filed was not required to determine the rights and obligations of the tenant All that he had to do on deposit of rent under S 7C was to issue a notice to the landlord informing him that such deposit had been made Section 7C so far as material provides

7C Deposit of Rent in Court — (1) When a landlord refuses to accept any rent lawfully paid to him by a tenant in respect of any accommodation the tenant may in the prescribed manner deposit such rent and continue to deposit any subsequent rent which becomes due in respect of such accommodation unless the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept

(2) Where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent referred to in sub s (1) in respect of any accommodation the tenant may similarly deposit the rent stating the circumstances under which such deposit is made and may until such doubt has been removed or such dispute has been settled by the decision of any competent Court or by settlement between the parties continue to deposit in like manner the rent that may subsequently become due in respect of such building

(3) The deposit referred to in sub s (1) or (2) shall be made in the Court of the Munsif having jurisdiction in the area where the accommodation is situate

(4) On any deposit being made under sub-s (1) the Court shall cause a notice of the deposit to be served on the landlord and the amount of deposit may be withdrawn by the landlord on application made by him to the Court in this behalf

8 Section 7C gives a right to the tenant to deposit rent when a landlord refuses to accept any rent lawfully paid to him by the tenant A tenant may allege that the landlord had refused to accept any rent lawfully paid to him The section itself does not require the Munsif to go into the question whether the landlord had refused to accept the rent paid lawfully or otherwise We fail to understand how as the learned Munsif observed the opposite party was served with a notice Sub-s (4) of S 7C contemplates of only one notice after the deposits in pursuance of the permission granted to deposit the arrears of rent under this section In the absence of any provision for sending notice to the landlord before granting permission to the tenant, we fail to understand how a notice was sent to the landlord before the passing of the order The sub-s clearly contemplates that on any deposit being made under sub s (1) the court shall cause a notice of the deposit to be served on the landlord and the amount of deposit may be withdrawn by the landlord on application made by him to the court in this behalf If the Munsif was to accord the permission to deposit the arrears of rent merely on being satisfied that the necessary allegation as required by S 7C of the Act has been made viz the landlord had refused to accept the rent lawfully tendered to him he was not obligated to enquire whether the allegation made in the application was correct or not

9 Section 7C permits a tenant to deposit the arrears of rent in court only under two conditions (i) when the landlord refuses to accept any rent lawfully paid to him by the tenant in respect of any accommodation and (ii) where any bona fide doubt or dispute has arisen as to the person who was entitled to receive any rent referred to in sub s (1) in respect of any accommodation If the deposit of arrears of rent was a valid deposit in accordance with the requirements of S 7C certainly it will amount to payment to the landlord and the tenant will be absolved from the liability of being evicted But if the Munsif had only to accept the application and accord permission to the tenant to deposit the arrears in court merely on the basis that necessary allegations in the application as required by S 7C had been made the court trying the suit for eviction cannot be precluded from enquiring about the validity of the permission under S 7C

10 It was next contended for the appellant that the first appellate court had recorded a finding of fact believing the statement of the tenant that the landlord had refused to accept the rent when tendered to him and also refused to accept the amount sent by money order and this finding could not have been set aside by the High Court in second appeal We are afraid this contention has no substance The finding recorded by the first appellate court is based more on surmises and conjectures than on the basis of the material on record We would do no better than quote the observations made by the first appellate court

The appellant having admitted deposit of rent in court under S 7C and the court having accepted the deposit holding the ingredients of the section to have been made out and permitting the appellant to continue depositing rent in future also prima facie the deposit has to be treated as valid and the burden lay on the plaintiff to show that the entire proceedings under S 7C were invalid and the Munsif had absolutely no jurisdiction to entertain the application and accept the deposit The circumstances of the case also indicate that the rent must have been tendered by the defendant and might have been refused by the plaintiff When the defendant had applied for allotment of the shop in his name plaintiff had filed objections before the Rent Control and Eviction Officer but his objections were overruled and allotment was made in favour of the defendant This was bound to cause annoyance to the plaintiff and he might have refused to accept the rent on that account

11 Obviously the first appellate court was of the opinion that once permission had been granted by the Munsif to the tenant to deposit arrears of rent it would be presumed that the permission was a valid one under S 7C and this view of that court had coloured its findings and it had entered into surmises and conjectures

12 The trial court had rejected the testimony of the defendant with regard to the tender of rent on the ground that he was an interested witness According to his deposition he had gone to pay the arrears of rent prior to bringing the application under S 7C and that he had twice tendered the amount of arrears by hand to the plaintiff in the presence of plaintiff's son and the plaintiff had refused to accept it He further deposed that the rent was tendered by money order also but the plaintiff had refused to accept it The defendant did not care to file the postal receipts in the present case nor did he produce the plaintiff's son before whom he made tender which was refused by the plaintiff Unless the evidence was filed in the present case that could not be taken into consideration by the court by summoning the file of some other case The first appellate court had however relied upon the postal money order receipts by looking into the records of the proceedings under S 7C The High Court in the circumstances was fully justified in reversing the finding recorded by the first appellate court as it was vitiated in law

13 It may look hard that the tenant who had deposited the rent in court under S 7C has to be evicted as the ingredients of S 7C had not been established but there is no help In the instant case the only evidence is the deposition of the tenant which the trial court did not rely upon and even the first appellate court did not categorically say that it believes the deposition of the defendant The law in our opinion is clear that the tenant must establish before the court in which the suit for eviction has been filed the factum of refusal by the landlord when the payment was sought to be made to him The mere fact that an application under S 7C for permission to deposit the arrears of rent has been allowed by the Munsif will not absolve the tenant from establishing before the court where the suit for eviction was filed that the landlord had refused to accept the rent lawfully tendered

14 For the reasons given above we do not find any error much less a manifest error for

interference with the judgment of the High Court The appeal is accordingly dismissed but there is however no order as to cost With the dismissal of the appeal the stay order stands vacated and no separate order is needed The civil miscellaneous petition is disposed of accordingly

Appeal dismissed

1986 ALL L J 768

= AIR 1986 Supreme Court 990

(From (1982) 86 Cal W N 479)

D P MADON AND B C RAY JJ

Criminal Appeal No 582 of 1982 D/ 11 3 1986

Lalli alias Chiranjib Bhowmick Appellant v State of West Bengal Respondent

(A) Penal Code (45 of 1860), Ss 396, 34, 201 — Offence under — Police statement of main eye-witness recorded after 56 days — Satisfactory explanation was given for delay in recording statement — Sessions Judge and High Court considered and accepted it — Supreme Court declined to interfere with concurrent finding of lower Courts (Criminal P C (2 of 1974), S 162) (Para 3)

(B) Penal Code (45 of 1860), Ss 396, 34, 201 — Conviction under — Accused committed pre-planned dacoity and murdered two persons in cruel manner and buried the bodies with a view to cause evidence of crime to disappear — Plea for reduction of sentence to the period already undergone rejected (Para 4)

Cases Referred Chronological Paras

AIR 1976 SC 2488 (1976) 4 SCC 288 1976 Cri LJ 1985 3

MADON, J — The Appellant along with some of his co accused was convicted and sentenced by the Additional Sessions Judge 11th Court Alipore under S 396 read with S 34 of the Indian Penal Code to imprisonment for life The Appellant as also the same co accused were also convicted and sentenced under S 201 read with S 34 of the Indian Penal Code to rigorous imprisonment for six years Both these sentences were directed to run concurrently The appeal filed by the Appellant as also his co accused were dismissed by the Calcutta High Court

2 The main evidence against the Appellant was that of an eye witness Haradhan Das who was the twenty sixth witness examined by the prosecution At the hearing of this Appeal some minor discrepancies in the evidence of the said eye witness were sought to be relied upon by learned Counsel for the Appellant All the points sought to be made by learned counsel have been considered by the learned Additional Sessions Judge and his findings have been confirmed by the High Court The minor discrepancies relied upon by learned Counsel hardly require noticing because they do not in any manner affect the credibility of the said witness

3 What was however vehemently urged by learned Counsel for the Appellant was that there was a delay of about 56 days in recording the police statement of the said witness and therefore his evidence should be rejected In support of this submission a decision of this Court in State of Orissa v Brahmananda Nanda (1976) 4 SCC 288 (AIR 1976 SC 2488) was sought to be relied upon in which the evidence of the sole eye witness whose police statement was recorded after a day and a half though accepted by the Additional Sessions Judge was rejected by the High Court and the accused was acquitted and the State had come to this Court in appeal against the order of acquittal That was a case which turned upon its own facts Further in that case the High Court had given detailed reasons for rejecting the evidence of the particular eye-witness Here the position is the reverse In the evidence led by the prosecution a clear cogent and satisfactory explanation has been given why the statement of Haradhan Das was recorded after the lapse of about 56 days The learned Additional Sessions Judge has carefully considered this explanation and accepted it and so has the High Court and we see no reason to interfere with this concurrent finding

4 Lastly a plea was made before us that the sentence of the Appellant should be reduced to the period already undergone This plea does not deserve any consideration This was a pre planned dacoity in which a motor lorry carrying 180 chests of tea was hijacked at about midnight taken to another place and the driver of the lorry and a Khalashi and two others who were in the lorry were murdered in cold blood in a cruel manner and their bodies were buried with a view to cause evidence of the crime committed by the Appellant and the other co accused to disappear

5 In the result this Appeal fails and is dismissed

Appeal dismissed

CD/CD/B483/86/VNP